An exposition of the Kinges Prerogatiue, collected *out of the great Abridgement of Iustice* Fitzherbert, and other olde writers of the lawes of England, by the right worshipfull Sir William Staunford Knight, lately one of the Iustices of the Queenes *Maiesties Court of common Pleas*

(***)

Where vnto is annexed the Proces to the same Prærogatiue appertayning.

1577.

¶ *Imprinted at London in Fleete-*streate within Temple barre at the signe of the Hand *and Starre, by Richard Tottel.*

¶ Cum Priuilegio ad imprimendum solum.

(.*.)

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1577.

(*)

To the right honorable Sir Nicholas Bacon Knight, Lord keeper of the great Scale of England: Richard Tottell wisheth health and longe life, with increase of honour.

NOt longe sithens, (Right honorable, and my speciall good Lord) there was deliuered to mee a Collection of the Kinges Prerogatiue, which Maister Staunforde had gathered and dedicated vnto your honour: which woorke because it is thought well of by the sages of the Law, and well worthy to be printed, I am therefore the bolder to put it in print, and publish the same. And althoughe the said Maister Staunforde very shortly after that hee had dedicated the same booke vnto your Lordshippe, were for his wysedome, grauity, learning, integritie, and sincere dealing, aduaunced to be a Iudge in the chiefe Court of this Realme for common Plees, and for his good seruice therein was by iust desert made Knight, and albeit that your Lorship also sithens that time haue atchyeued the place,

title and degree of high honour by the iudgement and calling of the Queenes moſt excellent Maieſtie: Yet I haue printed the Epiſtell dedicatorie of the ſaid woorke, in the ſame termes that the Auᵉthour thereof vſed, and with the ſame Style that your honour, and he both then had, when he dedicated the ſaid woorke vnto your Lordſhip, as a monument and token of the mutuall & longe continued amitie betweene you: moſt humblie praying your Lordſhip to accept it in good part, according to your accuſtomed goodneſſe, this my boldnes with your honour, and to pardon the ſame.

This 20. day of November.

Your honours moſt bounden
Richard Tottell.

Gulielmus Staunfordus Nicholao Bacono Regiæ Maiestati á Tutelarum procuratione. S.D.P.

(.*.)

QVanquam Anglicanæ leges, (amice singularis) haud minorem mærentur laudem, quam Iudex Fortescueus, libro de earum laudibus conscripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis dissita sit, profectio ad eam tam supra modum longa ac operosa, tum viæ & semitæ tam asperę, tam salebrosæ, tam inamœnæ sint, vt ad sui aditum pauciſſimos inuitet, quá plurimos absterreat, vel potius auertat: Optarem in tanta iurisperitorum turba, quam Anglia nunc habet, aliquid excogitari posse, leuandis legum Studiosis, pro longo isto ac molesto itinere. Vt propiore ac commodiore via ducti, valerent & proficiscendo & absoluto itinere, alias degustare literas: quibus non solum legalem scientiam multum illustrarent, sed & munia eis a Regia Maiestate mandata, tum pulchriùs, tum honorificentiùs administrarent. Id quod (meo iudicio) commodissimè fieri possit, si tituli, in magna (quam vocant) Fitzherberti Epitome, vel a Iudicibus nostris, vel ab alijs legum peritis, sedulo forent euoluti atq; elaborati, hoc est, omni titulo, in classes ac ordines distributo, singulis eorum actis ac causis certæ legum regulæ ac Maximæ presiderent. Exempli gratia. In Breuis titulum cadere possunt hæc, videlicet, Forma, vitiosa, Nomen clatura, seu personæ, seu vici. Eadem res bis petita. Obitus vel actoris vel rei, Nominis alterutrius partis pendente lite mutatio, cæteraq; huiusmodi quæ nunc nimis longo titulo sparsa tam tumultuarie reperiuntur, vt multo maiorem tum eruditionem, tum sudores, tum vigilias exigat eorum distributio, quàm rectè distributa ediscere. Et tamen non

possum committere, quin tantæ epitomes scriptorem, vel amplissimis laudib⁹ veham, qui summa sua doctrina, exactissimo iuditio, immensis, ac pene dixerim exanclatis laboribus, tam numerosam voluminum multitudinem, quibus vel legendis vix vnius hominis ætas (quantumlibet viuacis) sufficeret: in vnum duntaxat volumen atq; adeo epitomen contraxit, vt nunc nostratibus iurisperitis modo volentibus minima opera cõponere liceat quippiam tam facile, tam vtile, tam frugiferũ: vnde studiosi dimidiato tempore quo ante hac legib⁹ obdormire sint vsi: cum maturiorem, tum certiorem notitiam assequerentur. Quo nomine, rei mihi tam vehemẽter expetitæ typum quendam proposui, ac quasi primas inde lineas duxi, Recipiens ad me hiñoi predictorum titulos: qui regiam prerogatiuam spectant: non quod sum aliqua ex parte dignus, rem tam eximiam, tamque sublimem tractare: nec quod eruditione id præstare valeam: Siquidem de meo, nihilo plus hic est, quã collectio ac dispositio tantum earum rerum, quæ eisdem titulis includuntur: Sed magis quod istud meum commentitium, qualecunque sit, tibi semper distinaueram, id quod in nullum alium præter hunc titulum, cõmodè experiri potui, tum quod ad magistratum tuum Regii procuratoris tutelarum, maxime pertinere videbatur, tum quod compertum habeo, te iurisprudentiæ incumbentem, hunc quem proposui morem hactenus obtinuisse: quod fecit, vt reliquos tuos contemporaneos eruditione multis stadiis præcurras: tum denique quod tuum iuditium super hisce rebus in quibus assiduè versaris ac exercitaris requiro. Certus me hic rem habere cum homine tam amico, vt si quid lectione dignum inuenerit, id pergrate sit accepturus, sin minus, æqui bonique cõsulturus, reliquum quod habet vitii emendaturus: aut saltem ad id cõniuere velle confido. Proinde istud, quicquid est, tibi nuncupo, lege, ac pro tua voluntate fruere.

Vale.

To the right woorshipfull and his *singuler friend Nicholas Bacon, the*

kinges attorney of his court of wardes & liueries,

VVilliam Staunforde wisheth health, longe

life, and prosperous successe.

(.*.)

ALbee it the lawes of England, ryght singuler frende, are worthy no lesse honour, praise, and commendation, than Iustice *Fortescue* in his booke written of the praises therof, doth attribute and geeue vnto them, yet for as much as the knowledge of the said lawes is placed so farre of, the iourney therunto so exceeding longe and painfull, and the wayes and pathes so rugged and vnpleasant: I would wishe that amongest such plenty of learned men as be at this day some thing were deuised to help the students of their long iourney, that they (beeing lead a more nere and plesant way) might both as they wēt, and after they came to their iourneis end, gather some other knowledge, not onely therwith to garnish their owne science, but also the better to serue in such honorable roome as they bee called to serue the king & soueraigne lord in. Which thing might well come to passe after my poore mind, if such titles as be in the great abridgement of Iustice *Fitzherbert*, were by the Iudges or some other learned men labored and studied, that is to say, euery title by it selfe by speciall decissions digested, or ordered and disposed in such sorte, that all the iuditial actes and cases in the same might be brought & appere vnder certaine principles, rules and groundes of the said lawes. As for example, vnder the title of *Briefe* might come these titles, Forme, Misnaming of the person, misnaming of the towne: One thing

wise demaunded, death of the plaintifes side, death of the defendaunts side, chaunginge of the name of the pleintife or defendant, hanging the suit, with many such other like which nowe as thinges scattered abroade, and out of order, lie hidden within the said long title, that it requires much more learning, paines, and study well to order and dispose the matter in the same, then (after order made) to learne & beare it away. And yet surely there cannot be too much praise and commendation geuen vnto that greate learned mā, the Author of the said great Abridgmēt, which by his great learning, exact iudgement, and intollerable paines, brought such a infinit number of volumes (to the reading whereof a mans life would scant haue sufficed) to a much more lesse and narrower compasse, whereupon nowe these learned menne with lesse paynes might compyle the thing that should be so easie, so profitable, and fruitfull to the stu-dents therof, that in halfe those yeres they now lie sleeping in, they might come to a riper & more certaine knowledge and better iudgement: For which cause I haue drawen as it were a patern of the thing I so much desire, taking vp-on me such titles as appertaine vnto the kinges prerogati-ue, not as one in any parte worthye to treat of a thinge so high and pretious as that is, or in learning sufficient, or able therevnto (for of mine owne here is nothing more then only a collection and disposition of that that is alrea-dy contained in the saide titles) but rather beecause I haue alwaies meant this deuise vnto you, which I could not do or practise so well vppon any title, as vppon this that ap-pertaineth vnto your office of Attourneyship of the war-des and liueries, partly for that I know your selfe to haue obserued the like order in your owne study, which in fewe yeres hath gotten you aboue others, the great learning you haue, partly also for that I couet your iudgement in these matters, wherewith you bee daillie in vre and exercised;

knowing

knowing that I haue to doo herein with one so much my frend, that if there be any thing worthy the readinge, hee will take it thankefully, and if not so, well, yet will he take it in good part, the rest that is amisse he will beare it with me. This therfore whatsoeuer it bee, I dedicate vnto you, reade it, peruse it, and make of it what you will. Fare you well from Greys Inne the vi. of Nouember.

Añ Doñ 1548.

(.˙.)

Les ſummaries de les chapters de ceſt preſent liuer.

FINIS.

¶ Prerogatiua regis, edita an. 17. E. 2.

¶ *Le Roy auera le gard de touts lour terres que tient de luy en chiefe.* Chap. 1.

Dominus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in' capite per seruitium militare, de quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierunt, de quocunque tenuerint per huiusmodi seruitium, dum tamen ipsi tenuerunt de rege aliquod tenementum ab antiquo de corona vsque ad legittimam ætatem heredis: Exceptis feodis Archiepiscopi Cantuariensis, Episcopi Dunolm̃ inter Tyne & Tese, feodis Com̃ & Baronum de marches de terris in marchia vbi breuia domini Regis non currunt. Et vnde prædictus Archiæpiscopus, Episcopus, Com̃ & Baroñ habeant huiusmodi custodiam, licet alibi tenuerint de Rege.

Prerogatiua, is as much to say, as a priuiledge or preeminence that any person hath beefore an other, which as it is tollerable in some, so is it most to be permitted and allowed in a prince or soueraigne gouernor of a realme. For besides that, that hee is the most excellent and worthiest part or member of the body of the common wealthe, so is hee also (through his good gouernance) the preserver, nourisher, & defender of al the people being ẏ rest of ẏ same body. And by his great trauels, study and labors, they enioy not onely their liues, landes and goodes, but all that euer they haue besides, in rest, peace, and quietnes, as *Seneca de consolatiõ ad Polibium* saith: *Omnium domos illius vigilia defendit, omnium otium illius labor, omnium delitias illius industria, omnium vacationem illius occupatio.* For which cause the lawes do attribute vnto him al honor, dignity, prerogatiue, & preeminẽce

which

which prerogatiue doth not only extend to his owne person but also to all other his possessions, goodes, and cattels. As that his person shal bee subiect to no mans suit, his possessions cannot be taken from him by any violence or wrongfull disseisin, his goodes and cattels are vnder no tribut, toll or custome, nor otherwise distrainable: with an infinite number of prerogatiues more, which were to tedious here to recite. How be it, forso much as in euery realme the kinges prerogatiues are no small part and portion of the profits and commodityes of the Crown of the same, & namely within this realme of England, it hath ben thought good heretofore to declare and set forth in writinge certaine of the most highest and weightest matters and articles touchinge the said prerogatiues. And hereuppon was there a declaration made in writing by authoritie of parliament holden in the 17. yeare of the reigne of king Ed. the 2. the beeginning whereof is in manner and fourme as is aboue written: How be it, this Parliament maketh no part of the kinges prerogatiue, but long time before it had his being by thorder of the common law, as may plainly appere by them ý haue written before the making of the said statut of prerogatiue. For *Glanuill* that was chiefe Iustice in K. Hēry ý secōds daies writting of this matter, saith in this wise li. 7. cap. 10. *Notandum quod si quis in capite de dño rege tenere debet, tunc eius custodia ad dominum Regem plenè pertinet, siue alios dominos habere debeat ipse hæres siue non, quia dominus Rex nullum habere potest parem, multò minùs superiorem.* Also *Bracton* which wrot in the latter time of king Henry the third sayth, *Lib. prim de custod' & marit' dominorum: Si aliquis hæres terram aliquam tenuerit de domino rege in capite, siue alios dños habuerit siue non, dominus rex alijs præfertur in custodia hæredis, siue ipse ab alijs prius feoffatus fuerit, vel posterius, quum Rex parem non habet in regno suo.* Bothe these writers do not onely agree in euery point, but also geeue a reason why the king should haue the prerogatiue contained in this first

chapter

chapter. Also *Britton*, an other olde writter, which wrote his booke in kinge Edwarde the firſt̄ name, ſaithe: *Li. 3. cap. 2. Des heires nequedent ſi ils y eient aſcuns qui auncеſter moruſt ſeiſe de aſcun terre tenu de nous en chiefe, des auncients demeans, de noſtre Corone, volons auer les gardes de touts les terres dont gard appent que deuient deſcend a ceux heires come lour heritage eueſque touts les blees en tiels terres troues maintſoits de qui fees que les terres ſont. Britton* here not onely agreeth with the other, but also geeueth the king the Corne, growing vppon the groundes which the kinges tenants hold at the time of his death. Also in the great Abridgement of *Fitzherbert, Prærogatiue* 26. you ſhall finde in Anno 21. H. 3. written in thys manner: *Nota quod lex Angliæ & conſuetudo eiuſdem eſt, quod à quibuſcunque aliquis feoffatus fuerit, dum tamen à domino Rege aliquo tempore feoffatus fuerit per tenementum quod tenetur per ſeruitium militare, quod dominus rex habeat cuſtodiam omnium terrarum & tenementorum tam de feoffamento aliorum, quâm feoffamento proprio.* Which text if a man will any thing wreſt, he may make the kinges Prerogatiue more liberall then is made or declared by this Statut or any other the writers before remembred, for it extendes to any lands holden of the king by knights ſeruice, whether they be holden of the king in Capite or not: but for aſmuch as the ſaid other writers haue written ſo plainely in this matter, we will ſtand to them, and extend the Prerogatiue no further: how be it (as I ſaid) all thoſe writers beeing ſo long before the making of this Statut, doe plainely argue and proue, that this ſtatut doth but confirme and declare that that was the common law before, vnleſſe wee would doubt of the time of the making thereof, as *Littleton* doth in H. 15. E. 4. fo. 12. & 13. but without doubt it was made in king Edward the ſecondes time, and that plainly appeareth by the words contained in the 4. Chapter of this Prerogatiue, which be theſe: *Et illa voluntas tempore Regis H. patris Regis E. æſtimari conſueuit &c.* Which woordes were not written in kinge

Edward

Edward the firſt̄ dales, for then the wordes had bene *Patris noſtri*, ſo that (as I thinke) it is not to bee doubted, but that it was written in the time aboue limitted and expreſſed. Then go we to the expoſition of this firſt chapter of prerogatiue. The wordes bee: *Dominus Rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſeruitium militare*. Theſe wordes goe generally to all the kynges tenauntes, that is to ſay, as well to his tenaunts for terme of life, as to his tenants of eſtate of inheritance, if it ſo bee that hee that is in the reuerſion haue the ſaid reuerſion by dyſcent, and bee heire vnto the ſaid tenaunt for terme of lyfe, not forcing whether hee haue the reuerſion by deſcent from the ſayd tenaunt for terme of life, or els from any other anneſtor, as take the caſe to bee this, a man holdeth no landes of the king, but onely as tenaunt by the curteſie, and thoſe landes are holden in chiefe by knightes ſeruice, and the ſaid tenaunt by the curteſie is ſeyſed in hys demeſne as of fee, of landes holden of other lordes & dyeth, the landes holden of other deſcend vnto him in the reuerſion, which is in deede nert heire vnto the ſaid tenaunt by the curteſie, in this caſe the kinge ſhall not onely haue the wardſhip of the landes that were holden by the curteſie, if the ſaid heire be within age, but alſo the lāds holden of other by vertue of this prerogatiue. And if the ſayd heyre were of full age at the time of the death of the ſaid tenaunt by the curteſie, the king ſhall haue primer ſeaſon both of the one land and of the other, as it appeareth in the newe *Natura breuium fol.*258. Like lawe is it, if a woman be endowed of landes holden in capite, & is ſeaſed of fee ſimple of lands holden of other and dieth ſeyſed, and they deſcend vnto ỹ heire which is in the reuerſion: in this caſe the kinge ſhall haue both theſe landes by vertue of this prerogatiue, like as hee ſhall haue in the other caſe before, and that may you ſee in 26.li.Aſſ.P.57. for in both theſe caſes they be the kinges tenāts, & hold of him by knights ſuice in capite, for tenant in dower

dower in the kinges case holdeth not of the heire, but onely of the king, as it shal appeare more fully hereafter fol. 10. But if he in the reuersion be not heire of the landes holden of other in the cases aboue remembred, otherwise it is. But what if he in the reuersion haue the same reuersion by purchase, and not by discent, whether shal the king then haue his prerogatiue or not? And as to that it should seme by the newe *Natura breuium fol.* 259. that the kyng shall haue hys prerogatiue in that case also, for there the remainder was to the heire and to his wife, and to his heires of their two bodies lawfully begotten, & the husband in the remainder did sue liuery howbeit against the law as me seemeth, *Ideo quere*, but if the case in the said newe *Natura breuium* had bene, that landes holden by knights seruice in capite, had beene geeuen to one for terme of his life, the remainder ouer in fee, which person in the remainder hath issue and dyeth, and the tenant for terme of life holdeth landes of other Lordes and dieth, which descend to the issue that is in the remainder, here it might be said, that the king should haue prerogatiue in the whole, like as he had in the cases before remembred of tenant by the curtesie, and tenaunt in dower, for the like reason will serue in the one case, that serueth in the other, The wordes of the statute be further: *De quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierunt de quocunque tenuerint*. These woordes rather appertayne vnto the landes holden of other, then to the landes holden of the Kynge in Capite, as it should appeare by the cases beefore remembred, and then by these woordes the Kinges tenaunts in hys lyfe tyme must him selfe bee seysed either in possession or reuersion of those landes that bee holden of a common person that shall descende vnto his heyre. For if hee were not seysed thereof, but they discend vnto his heyre from some other auncestor, the king shall not haue his prerogatiue in them, as appeareth

reth in H.5.E.4.fo.10.but whether the kinges tenant were seised of them in his owne right,or in an other bodies right it maketh no difference. As take the case he were seised of them but in right of his wife, and hath issue and dieth,his issue is in the kinges ward for the lands that his father held in Capite,& afterward the wife dieth,the issue being still in warde, the king shall haue Prerogatiue in these lands of the wife also,because the husband was seised of them as of his demean as of fee,the day of his death,and so within the compasse of this Statut. And this case may you see in H.B. H.4.f.6. And note,that notwithstãding this statut speaketh but of landes,yet seruice are to bee taken by the equitie of the same,as it is plainly proued by the wordes of *Diem clausit extremum*, which saith: *Quantum terre tenet de nobis, aut de aliis, tam in dominico, quàm in seruitio.* So that if one hold of the kinges tenant by certaine seruices,the king shall haue the seruices in ward,for they be in nature and place of the land that is holden,and so shal it be supposed. And therfore when the king hath those seruices in ward, and the tenant that holdeth by those seruices dyeth his heire within age, if the said seruices were knights seruice, the king shall haue ward by reason of wardship: But yet by that no Prerogatiue in the other lands of the second ward which are holden of the other Lordes,as it may appeare in *Gard* 105. A.6.R.2. For the kinges tenaunt was neuer seised of those other lands,ne yet of the seruices that they were holden by, and so without the compasse of this Prerogatiue. Like law it is,where the king hath the temporalties of a Bishop in his custodie during the time the See is vacant, and one that holdeth of those temporalties by knights seruice dieth, hys heire within age,the king shall haue the wardship of hym and the reason of it is, because the king hath the wardship of the temporalties, by reason whereof thys wardshippe commeth, whych temporalties the king hath in warde by

the

the order of the common law, *in iure corone*: For they bee barronies, which can bee holden of none other then of the kinge in capite, and then by the common lawe, (take it he were no better then a common person) yet his highnes must haue the wardshippe of them that hold of those temporalties by knightes seruice, if they fall duryng the tyme the said temporalties, bee in his handes, with such landes as they hold of those temporalties but not with such landes as they hold of other, and then must the heire thereof when hee commeth to his full age sue a liuere as shal more plainly appere when wee come to the third chapiter of this prerogatiue, The wordes of the statute beefore recyted are *in dominico suo*: this woord demeane is not here taken to bee the very possession, or taking of the profits, for if the kings tenant dye seysed but of a reuersion, or of a remainder, in landes holden of a common person, and during the minoritie of his sonne the particuler tenant dyeth, the king (thys notwithstandinge) shall haue this land in ward as he hath the rest, as it may appeare. P. 22. Henrici sirti fol. 18. and P. 15. Ed. 4. fol. 12. So it is if the kinges tenaunt dye seysed of an aduowson, appendant to landes holden of a common person, P. 46. E. 3. 11. The wordes be further, *die quo obierunt*, and therfore if the kinges tenaunt dye seysed, of landes holden of a common person, and a straunger abateth, yet the heire shalbee in ward, and the kinge may enter, and so is it if the heire recouer by assise of mordaũcester, as it appeareth in the newe *Natura breuium Fol*, 257 and *Liuere*, 28. T. 12. R. 2. But take the case to bee, that the kinges tenant die not seised but is disseised and dieth, whether in this case the king may haue prerogatiue or not, and it seemeth that hee may, for in all such cases where the heire hath a right of entrie, the kinge may enter in name of the heyre, and holde it afterwarde in warde: but yf the heyre haue but a tytle of entre, or ryght of accyon, it

seemeth to bee otherwise, howbeit looke for those matters in the said booke of H. 15. E. 4. fo. 13. & T. 12. H. 7. folio 20. & 18. lib. assis. P. 18. where it is adiudged that of landes holden of the king in chiefe, ỳ king as in right of his ward might seise by a *Scire facias* vppon a title of entre. And note also ỳ there is somewhat more to bee vnderstanded heere, then is written or expressed, that is to saye, that the sayde landes must discend to the kings warde, for notwithstanding the kinges tenaunt were seised in his demeane as of fee, daye of his death, in landes holden of a commō personne, yet if the same after his deathe doe not discende to the kinges warde, but to another heire, the king shall not haue prerogatiue in them, as it appeareth in H. 12. E. 4. fol. 18. The wordes of the statute bee also *de quocunque tenuerint.* Put case the kinges tenaunt is seysed of certeyne thinges whiche neyther are holden of the king, nor yet of any other, whether shall the king haue them in ward or not, as Market, Warren, rent secke, or aduowson en grosse: and as it shoulde appeare in H. 3. H. 7. fol. 4. P. 46 E. 3. fo. 12. & H. 21. H. 6. fol. 11. the kinge cannot haue them in ward, and yet in H. 15. Ed. 4. fol. 14. some holde oppinion to the contrarie, therefore inquire and learne what the lawe will in these cases. The wordes of the statute bee *Per huiusmodi seruicium* that is to saye, by like seruice, By these wordes the landes that are holden of other must be holde also by knightes seruice, or els the statute extendes not to them, and yet the lawe is taken to the contrarie, for if the landes holden of other bee holden but in Socage or free burgage, the king shall haue prerogatiue in them, as it appeareth in H. 24. E. 3. fo. 47. for this statute is but a confirmation of the common lawe, and therefore shalbe taken by equities and namely when the lawe was so taken in *Prerogatiue*. 25. T. 9. H. 3. which was long tyme before the making of this statute. Howbeit *Bracton. Li. 1. de custod.*

custod. & releuiis, & Britton li. 3. ca. 2. doth extend thys prerogatiue no further then to lands holden of other by knights seruice, therefore enquier for the cause and reason thereof. The wordes be further, *Exceptis feodis archiepi. Cantuar. &c.* This exception extendes not to the body, wherefore the kynge shall hold that in ward against all men, but it extendes to such landes as are holden of these personnes exempted by this statute. Put case then that any of these persons purchase a seignorie since the time of the making of this statute, shal the king haue his prerogatiue in the landes holden of that seignory or not? And it is cleere, he shall, notwithstanding the aforesaid wordes of exception: for they doo not extend but to such fees as were theires at the time of the making of this statut. Then further, for asmuch as there be dyuers statutes concerning wardship, made aswell before as since the time of king Edward the second, let vs see whether this prerogatiue will extend to these statutes or not, & it seemeth it doth, for asmuch as this prerogatiue hath been euer from the beginning as I haue said beefore: And therfore if the kinges tenaunt being seysed of landes holden of a common person, maketh a feffement thereof by collusion contrary to the statute of Marlebridge ca. 6. to defraud the lord of the wardshippe, and dyeth, the king hauing his heire in warde, and this matter found by office, shall seyse vpon a *scire facias* if the collusion bee auerable, or without a *scire facias*, if the collusion bee apparaunt and hold the same in ward by force of this prerogatiue, and that appeareth in T. 9. H. 4. folio. 6. So likewise where the statute made in 4. Henrici 7. capitul 17. prouideth that the heire *cestuy que vse* shalbe in warde. Put case that the kinges tenaunt in capite beefore the statute in Anno 27. H. 8. had made a feoffement of landes which hee holdeth of a common personne to the vse of himselfe and his heirs, and died before that statut,

in this case the king should haue had his prerogatiue in the landes so beeing put in feoffement to an vse euen as if his tenaunt had died seised therof, as it appereth T. 12. H. 7. fo. 19. Then last of all let vs learne howe the Lordes whose fees the king hath in ward by his prerogatiue shall bee demened and ordered for the rentes to be dewe for their seignories, during the wardshippe, whether they shall leese them as they doe the landes. And it appeareth 29. li. all. p. 5. that they had them by petition at the kinges handes, & therewith agreeth thoppinion of *Hill*. in H. 24. E. 3. fol. 24. and the newe *Natura breuium*. fol. 158. Learne the reason of these bookes, for it should seme to mee the lawe to bee otherwise, because that all mesne seignories are suspended during the tyme the king hath the tenancy in ward, if it bee not percase for the surplusage of a rent seruice which the mesne may sue for to the kinge by way of petycion. And to say as M. 26. H. 8. fol. 10. that the heire shalbee charged at his full age with the said rentes, it were not reason, for then both his land should bee in ward, and yet he charged to pay rent for the same: wherefore it seemeth that these bookes are against the lawe. And with mee agreeth *Bracton* in his first booke in the chapter *de custodia*: where hee saieth. *Et cum tali ratione sint aliorum feoda in manu domini regis, predict ratione alii capitales domini feod illorum nihill poterint exigere de terris et tenementis illis nec in seruic. nominatur, nec in auxiliis ad filliam maritandum vel filium primogenit militem faciendum vel in factis quamdm terre fuerint in manu domini regis, sed precipietur vic. quod huiusmodi distringere non permittat.* Howbeit *Bracton* in his said booke in the chapter, *De releuiis* sayeth, that the heire at his full age shal pay his relefe to euery of his lordes notwithstanding hee hath ben in ward, *quod nota*: for in all other cases hee neuer paieth relefe, that is to say where hee hath bene in ward, and hee maketh no other reason for it but this, s. *quod hoc*

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est speciale in rege propter suum priuilegium. And so is the booke in the 24. yere of king Edward the thirde fol. 14, and the 39. yeare of the same king, *Relefe 7*. Howbeit *Brittons* opinion. li. 3. cap. 2. is, that the heyre shal pay no relefe to the other lordes after he hath beene in the kinges warde, and commeth to his full age, and cannot fynd that the heire in any such case should or doth pay any relefe to the king, that is to say, where hee hath beene in warde: therefore learne what experience teacheth vs in these cases, *Voyes lestatute fait Anno. 2. Ed. 6. cap. 8. en Rastals collection. Escheters. 15.*

Le Roy auera le mariage de chescun, queux terres il auoit en garde. Cap. 2.

ITem Rex habebit maritagium hered. infra etatem, & custodia sua existen, siue terre & hered. eorundem sint ab antiquo de corona, siue de eschaetis, que sunt in manu domini Regis, siue habuerit maritagium ratione custod. terrarum dominorum eorundem hered. nullo habito respectu ad prior. feoffamenti licet de aliis tenuerunt.

All that is contained in this chapiter, was the kynges prerogatiue by the order of the common lawe, as it may appeare in the bookes of *Bracton, li. 1. ti. de herede Sockman in cuius custodia esse debeat*, and *Britton, li. 3. ca. 2.* and in a booke M. 24. E. 3. fol. 31. & 65. Where it is sayd that no lord can bee more auncienter then the kyng, for all was in him and came from him at the beginning. And therefore his highnesse must haue prerogatiue in the body of whosoeuer the infaunt holdeth beesides, bee it that the landes are holden of the kings highnesse as of the auncientnes of the Crown, or of his newe escheates, or come vnto him as ward by reason of wardshyp. T. 12. H. 4. fol. 18. or that his highnesse doo purchase the seignory of him that is Lord by posteriority.

or purchaseth a manor holden of one of his honors, which are of his newe eschetes, of which manner thaunceſter of thinkant held by poſteritie: in all theſe caſes the king ſhal be preferred to the wardſhip of the body and mariage, beefore any other lord of whom the aunceſter alſo held the day of his death by prioritie of feffemēt, that is to ſay, more aūcient feffement: howbeit in theſe caſes his highnes ſhal not haue wardſhip in the landes holden of ?hother Lordes, beecauſe his tenaunt held not of him in chiefe, but onely ſhall haue preferrement in the body & mariage beefore al other. Then ſince the common law and ſtatut doth giue the king this prerogatiue, let vs ſee whether his highneſſe may by graunting away his ſeignory to an other, graunt alſo with the ſame his prerogatiue to the grauntee, that is to ſay, whether his grauntee ſhal haue the ſame prerogatiue in the body of ỳ childe as his highneſſe might haue had, in caſe ỳ ſeignorie had ſtill continued in him. And it appeareth in *Prerogatiue* 23 H.12.E.3.& H.14. H.4.folio.9. that if the king graūt the ſeignory to an other in fee ſimple, that the graūtee ſhall haue no prerogatiue, beecauſe there remaineth nothing in the kinge of that ſeignorie vngraūted, But if the graunt were made to a common perſon for no longer time then during his life, and the reuerſion ſaued to ỳ kinge, thē learne what the lawe will in that caſe, for wee haue in H.5.E.3. fol.4. that where the graunt was made to the Queene for terme of her life, the reuerſion in the king, that her grace had prerogatiue euen as the king himſelfe ſhould haue had, and for none other reaſon there made but onely beecauſe ſhee held in right of the king, But a man may add further to that reaſon, and ſay, that her grace and a common perſonne bee not lyke, for though ſhee bee a perſonne exempt from the king and may ſue and bee ſued in her owne name, yet that that ſhee hath, is the kings, and looke what

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shee loseth, so much departeth from the king, and therfore all her tenauntes of parcell of her estate may haue ayde immediately of the king without making her party or priuie therunto, and so shee holdeth merely in the kings right: but a common person doth not so. For the king hath nothing to do with the thing that he holdeth during the life of the lessee howe be it if the graunt bee made to the Queene for terme of her life, ý remainder ouer in fee, it seemeth that her grace getteth no prerogatiue, and so it is sayed in M.24. Edward 3. folio. 65. Like lawe is it if the king graunt an honor to the lord Prince, and his heires, kinges of England, it seemeth by the better oppinion in M.21, Edward 3. folio 41. that the lord Prince shall haue therwith the kinges prerogatiue, because it is not seuered from the crowne after the fourme as it is geeuen, for none shalbe inheritour thereof but kings of this realme. And note well that not withstanding the lawe were so, that none in this case but the Queene or Prynce might haue the kynges Prerogatiue, yet if the kyng hauyng the seygniorie in his handes after that the ward doth fall, graunt the same ward ouer, the grauntee shall haue and enioy the preferrement of the maryage against the other Lordes euen as the kynge should hymselfe, beecause that notwithstanding any such graunt, yet the kinge is sayde styll gardeyne, and the infaunt dryuen to sue for his liuery at the kynges handes when hee commeth to hys full age, and not at the handes of the grauntee, whych in thys case is but onely as a committee. And so is the booke in T. twelue Henry the fourth 25. Lyke lawe is it in the case aboue remembred where the Queene hath prerogatiue, and the warde falleth, and shee graunteth her wardshippe ouer, her grauntee shall haue preferrement in the maryage beefore all other lords. And that also appeareth in Henry 5. Edward the thyrde fol. 4.

howbeit that case was enforced by that that the king confirmed the state of the grauntee, like lawe is it if the kyng haue a ward of right of his corone, and graunteth it ouer with speciall woordes, that is to say, that the said grauntee shall also haue ward by reason of wardshippe, if it fall during the minoritie of the first ward, in this case if there fall a warde which holdeth by posteritie of the heyre that is in warde, yet that notwithstanding the sayd grauntee shall haue the preferment in the ward of the body and maryage, euen as the kinge himselfe should haue hadd if he hadd made no such graunt, beecause it is meerely in the kinges ryght which remayneth styll lord, and the grauntee none other but as it were his committee, and this appeareth also in the 12. yeare of kinge H. the 4. fo. 25.

Le Roy auera primer seisin de touts les terres, dount son tenaunt ẽ chiefe fuit seisie in fee. Cap. iii.

ITem Rex habebit primam seisinam, post mortem eorum qui de eo tenent in capite, de omnibus terris, & tenementis, de quibus, ipsi fuerunt seisiti in dominico suo vt de feodo, cuiuscũque etatis heredes eorum fuerint, capiend. exitus eorundem terrarum & tenementorum donec facta fuerit inquisitio, prout moris est, & ceperit homagium huiusmodi hered.

In the 52. yeare of king Henry the third, longe time beefore the making heereof, was there an other Statute made at Marlebridge concerning this matter: In the 16. chapter wherof it is thus prouided. *De hereditate autem que de domino rege tenetur in capite sic obseruandum est, vt dominus Rex primam habeat inde seisinam, sicut prius inde habere consueuit, nec heres, nec alius, in hereditatem illam se intrudat, priusquam illam de manibus domini regis recipiet, prout huiusmodi hereditas de manibus ipsius, et antecessorum suorum, recipi consueuerit*

sueuerit, et hoc intelligatur de terris & feod. que ratione seruicie militaris, socagü, vel seriantiæ, seu iure patronatus, in manibus domini regis esse consueuerunt. Both these statuts declare them selues to be of none other force thē as a confirmation of that, that was the kinges prerogatiue by the order of the common lawe, as it may appere by these wordes, *prout moris est, sicut prius habere consueuit, recipi consueuerit, esse consueuerunt.* And therwith agreeth also *Britton follio.17.* The words of the Statute bee, *Rex habebit primam seisinam.* what *primam seisinam* is, it is declared by the woordes that followe. s. *capiendo omnes exitus &c.* by which woordes may appere the king shall not onely seyse, but also receaue the whole profites till liuerie bee sued, which suit most commonly hath bene and is within the yeare and day next after the death of his tenaunt, and therefore the kyng vseth to take no more then the first fruites, that is to saye, one yeares profites, if there bee not apparaunt default in the heire that hee will not sue his liuery, in which case then the kinges highnesse shalbee aunswered of all the profites taken till liuery be sued, or at the least tendred, and after pursued with effect, yea, & if it be a generall liuery and not rightfully pursued according to the order of the lawe, the kynge shall reseyse and bee aunswered of all the meane profites from tyme of suyng of the sayd liuery, for when the liuerie is myssued, it is as it hadd beene neuer sued. Howbeeit thys reseysure shall not bee without a *Scire facias*, as I shall therefore speake more at large hereafter. But if the heire or hee that should sue liuery doo make a rightfull suit for the same, according to the order of the lawe, and as much as in hym lyeth to doo to haue liuery, howbeeit the kinge will not but will bee aduised ere hee make him liuery, and so protract the tyme, in this case his highnes of right may not haue the profytes from the tyme the party was thus delayed, but

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ought to restore them vnto the party vppon his liuery as may appeare in H.1.H.7. fol.28. And theruppon it is to bee noted that there bee two kynde of liueries, the one generall, the other speciall. The generall, is the liuery that this Statute speaketh of, the especiall may bee more properly treated of, when wee come to the thirteenth chapiter of this prerogatiue. And this generall liuery is some times made *cum exitibus*, and sometymes *sine exitibus*, but for the most part *sine exitibns*: For where it is made *cum exitibus*, from the tyme of the seysure, there it is properly no liuery, for it appeareth the king neuer seysed rightfully or by any tytle. As for example, if the king will seise the land that ys found in thoffice to be holden of the archbishoppe of Caunterbury, or Bishop of Durhã, or any such persons as are exempted in ỹ first chapiter of this prerogatiu, in this case they shal haue an *Ouster le main vna cũ exitib⁹*, as it appeareth in li.16.Ed.3.P.29. The same is it, if of lands holden in capite, there bee a lease made for terme of life, the remaynder ouer to a stranger, tenant for terme of life dyeth and this matter found by office, nowe if the king seise, he in the remainder shall haue an *Ouster le maine vna cum exitibus*, as it appeareth in H.14.H.4.fol.32. P.18.E.3.fol.21. T.24.E.3.fol. 29. Lyke law it is where two hold ioyntly of the king, and the one dyeth, and this matter found by office, and yet that notwithstanding the king seyseth, hee that surviues shall haue an *Ouster le main vna cum exitibus*, as it appeareth.44. Ass.P.36. and in the newe *Natura breuium*. fol. 256. & 257. For in all these cases where the *Ouster le main* is *vna cum exitibus* the kynge ought not to haue seised, and so sayethe *Thorp*. T.45.E.3.fol,18. the woordes of the statute bee further, *Post mortem eorum qui de eo tenent*. Upon this, it is to be seene at what time after the kynges tenaunts death, thys liuerie shalbee sued. If the possession of the free holde im-

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mediatly after the death of the kinges tenaunt dyscend vnto his heire, it is to bee sued forthwith, and if but onely a reuersion discend, then it is not to bee sued till after the death of the particuler tenaunt, as it may appeare *Natura breuium folio* 258. where the heire sued not liuerie tyl after the death of the tenaunt by the curtesie, tenaunt in dower, and tenaunt for terme of life. But learne what the lawe should haue beene, if the kinges tenant had dyed seysed of a reuersion whereuppon rent had beene reserued, his heirs of full age, whether hee should haue then sued liuery forthwith, or els to haue tarried tyll the death of the particuler tenaunt, for in Y.7. H.6. folio. 3. *Iune* thinkes hee should tarry, or els it might follow the king should haue double liuery, that is to say, one for the rent, another for the land, but *Paston* is in the contrary oppinion, and resembles it to a reuersion depending vpon an estate taile with a rent reserued, howbeit at this day there is an election geeuen vnto the heire, that is to say, either to sue his liuery immediatly after the death of his auncestor in the life of these particuler tenaunts, or els to tarry vntill they die, and if he sue his liuerie in their life, he payeth for primer seisine, but the moitie of one yeres profites, and if after their death, then hee payeth the whole yeres profit, howbeit if there bee a rent reserued and he pursueth his liuery in the life of the particuler tenaunt, it seemes besides the halfe yeares profit of the value of the land, he shall also pay the whole yeres profite of the rent reserued, therefore learne what common experience teacheth vs in that case. The woordes of the statut be *Qui de eo tenent in capite*. By these woordes he must hold of the kinge in chiefe, for if hee hold not of hym in chiefe, the king can haue no primer seisine. And yet you shal see in the new *Natura breuium folio*. 263 that of landes in the Citie of London holden of the king in Burgage

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the king hath primer seisin, and the heire thereof sued hys liuerie, but the President seemes to be against the law, for *Markham* saith in H.7.C.4.f.17. that in Neuels case it was found that ones father died seised of certaine land that hee held of the king in Burgage, and therupon therchetor dyd seise, which seiser by thaduise of all the Justices was discharged by a *Supersedias* awarded to therchetour, for the woordes of both the aforesaid statutes be very plaine therin, that is to say, that hee must hold of the king in Capite, but whether he hold of the king by knightes seruice, or by Socage in Capite, it maketh no matter, so that he hold in Capite, for the king in both cases shall haue primer seisin although not with so large a prerogatiue in the one case as in the other. For in the first case, where the tenure is knights seruice in Capite, the king shall haue the same prerogatiue when the heire is of full age at the death of hys auncester, as he should haue had if he had bene within age, that is to say primer seisin aswel in the lands holden of others, as of him selfe, bee it that the landes holden of other be holden by knightes seruice or in Socage: But otherwise it is where the tenure is but a tenure in socage in Capite, for there the king shal haue no primer seisin in lands holdē of other, namely if they bee holden of other by knights seruice, as it appeareth plainly by the Statut of *Magna charta* capitulo.27. and in the new *Natura breuium* folio 256. nor yet any primer seisin of landes holden of hym selfe in Socage in Capite: If the heire at the death of his auncester be not of the age of fourteene yeres, as appeareth H.35. H.6. folio.52. T. 45. Ed.3. folio 19. and also in the new *Natura breuium folio.356.* & *folio.259.* But in euery of these cases they to whom the body belongeth shall haue an *Ouster le mayne* of the landes *vna cum exitibus*, that is to say, the Lordes of whom the land is holden by knights seruice in thone case,

and

and the *Prochien amy* in the other case. But where the landes be holden of the king in Socage, in capite, and the heire of the age of 14. yeres at the death of his auncestor, there the king shall haue primer seisin, & the heire driuen to sue ouery', for there is no person that can make any title to the heire or his landes but onely the kinge, and therefore the king must haue his primer seisin, and the heire driuen to sue his liuery by expresse wordes of the forsaid statute of Marlebridge, & so it seemeth also in that case that his highnes shall haue primyer seisin in landes holden of other, so they be holden but in Socage, for the reason aboue remembred, *Tamen quere*. The wordes of the statute be farther, *de omnibus terris & tenementis de quibus ipsi seisiti fuerunt in dominico suo vt de feodo*. These wordes may bee conferred & coupled with the first chapiter of this statute of prerogatiue, which hath the very selfe same wordes. And therefore looke in what cases noted vppon the first chapiter the kinge hath his prerogatiue by reason of wardshippe, in al the same cases shall his highnesse haue prerogatiue by reason of primer seisin if the heire were of full age at the death of hys auncestor. Wherefore to rehearse them here particularly it were but superfluous, except it bee in the case onely of collusion geuen by the statute of Marlebridge c. 6. where the heire is within age, because it speaketh nothinge of the heire that is of full age. And therefore in that case it seemes the king cannot haue like benefite of primer seysin as he hath of wardshippe, when the heire is within age. Howbeit there is a booke in that point left at large, which is M. 17. E. 3. fo. 63. M. 7. E. 3. *Relefe* 12. *& Collusion* 29. P. 31. E. 3. and there the case was: The tenaunt enfeoffed hys sonne and heyre and dieth before the feoffee gaue notyce thereof to the lord. *Ideo quere*. The woordes of the Statute bee farther, *Cuiuscunque etatis heredes ipsorum fuerint*. To these woordes also shall the first chapiter of this Statute haue

relation

relation, for they plainly declare that if the heire were w̄in age at the death of his auncestor, the kynge shall haue primer seisin, and the heire driuen to sue his liuery, notwithstanding also the king hath had the wardshippe of him. For the woordes be generally spoken, and may bee extended aswell where he was w̄in age at ẏ death of his auncestor, as where he was of full age. And so hath it bene euer vsed, saiuing that where he hath bene in warde, he payeth but one halfe yeres profit for primer seisine, and in the other case hee payeth the whole. The woordes of the statut bee farther, *capiendo omnes exitus eorundem terrarum & tenementorum, donec facta fuerit inquisitio, prout moris est, et ceperit homagium hered.* By these woordes it may appeare that the kynge after the death of his tenaunt, and before any office found, might seyse the landes and take the profits, which thinge surely is true, as playnly is proued by the writie of *Diem clausit extremum*, which hath these woordes, *Capein manū nostram omnes terras & tenementa &c. donec aliud inde preceperimus, et per sacramentum proborum hominum diligenter inquiras &c.* So the seyser goeth before the inquisitiō, howbeit since the statute made at Lincolne, Anno 29. E. 1. called *statutum de escaetoribus*, it is not vsed to seyse till office be found, and then the king to be aunswered of al the profits since his tenaunts decease, which commeth all to one effect. And yet that statut doth not restrayn the seyser, but that thercheator may seise at hys daye without office. By the aforesaid statute of Marlebridge capitulo. 16. it is expounded and plainly sett foorth of what landes and fees the kynge shall haue primer seysine, for these bee the woordes. *Et hoc intelligatur de terris & feodis que ratione seruicii militaris, socagii, vel seriancie siue iure patronatus in manibus domini regis esse consueuerunt.* By these woordes it may appeare that hee that

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is ward because of wardshippe, shall not sue Liuery, or where one holdeth of the kinges warde by knightes seruice, or in Socage, and dyeth, his heire of full age, the king shall haue primer seisine of the landes that are so holden of his warde, and the said second heire dyuen to doe his homage or fealtie, as the case shal require, to the king, and also to pay his relefe vnto him, & to sue liuerie of the sayd landes, as it appeareth hee did in the new *Natura breuium folio* 61. & 62. For it is within the compasse of these wordes, *que ratione seruitii militaris*. So is it if the king haue a Bishoppes temporalties in his handes during the tyme that the See is vacant, and one that holdeth of that temporalties by knights seruice or in socage dyeth his heire within age, in this case, after that the kinge hath had the wardship, the heire at his full age shall pay primer seisine and sue hys liuerie. And so shall he doe if hee be of full age at the time of the death of his auncestor, for the wordes of the Statut bee, *De feodis que iure patronatus in manibus domini regis esse consueuerunt*, and therewith agreeth the new *Natura breuium folio* 254. But learne if the kinges tenaunt in Chiefe dye, his heyre of full age, and one that holdeth of the heire before he hath sued hys liuerie dyeth, his heyre also beeing of full age, whether in this case the king shal haue primer seisine of the landes of the second heyre or no, as hee should haue had if the heire of hys tenaunt had beene within age, and in the kinges ward at the tyme when this second heire did fall, and it seemeth to mee hee shall, for the reason made afore.

Then last of all whether this Prerogatiue extend to any Statut made since the time of kinge Edwarde the second, and it seemes it doth, and that for the reason noted in the first chapter folio 9. as the feoffees of *Cestuy que vse*,

before

before the statut made in the 27. yere of king H. 8. vsed to sue an *Ouster le maine sine exitibus*, which was in nature of a liuerie for the heire of *cestuy que vse* which had bene in ward. Item for asmuch as there be exceptions in the first chapter and none in this, whether they also be comprised within this chapiter or not: and me seemes they bee, because these ij. chapters must concurre together and agree in euery thing. And if the heire be within age at the death of his auncestor, the Archbishop of Canterbury shal haue an *Ouster le main vna cum exitibus*, so that the heire shall not sue liuerie of that, and then by the same reason if he be of full age at time of the death of his auncestor, for the liuerie in the one case and the other is geeuen by this chapiter as me seemeth, *Tamen quere.*

¶ *Le Roy auera lendowment & mariage de ses veufs & femmes.* *Cap.iiij.*

ITem assignabit viduis post mortem virorum suorum qui de eo tenuerint in capite, dotem suam quæ eas contingit &c. licet heredes fuerint plenæ ætatis si viduę voluerint, & viduę illæ ante assignationem dotis suæ predictæ, siue heredes plenæ etatis fuerint, siue infra etatem, iurabunt quod se non maritabunt sine licentia regis. Et si se maritauerint sine licencia regis, tunc Rex capiet in manum suam nomine districtionis omnes terras & tenementa quæ de eo tenentur in dotem, donec satisfecerint ad voluptatem suam, ita quòd ipsa mulier nihil capiet de exitibus &c. quia per huiusmodi districtiones huiusmodi mulieres, seu viri eorum finem faciant regi ad voluptatem suam, & illa voluntas tempore Regis H. patris regis E. estimari consueuit ad valentiam predictæ dotis per vnum annum ad plus, nisi vberiorem gratiam habuerint. Mulieres quę de rege tenent in capite aliquam hereditatem, iurabunt similiter, cuiuscunque fuerint etatis, quòd se non maritabunt sine

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sine licencia Regis, & si fecerint, terræ & tenementa ipsarum eo-dem modo capiantur in manum domini regis quousque satisfece-rint ad voluntatem regis.

This statut likewise doth but confirme the common law before, as it appeareth by the statute of *magna charta cap. 7.* which was first made in ỹ time of king H. the third, which is, *Quod nulla vidua distringatur ad se maritandum, ita tamen quod securitatem faciet, quod se non maritabit sine assensu nostro, si de nobis tenuerit.* And also in the 24. H. 3. *Prerogatiue* 27. it is said, that when the kinges tenaunt dyeth, and his wife en-dowed, shee cannot marry without the kinges licence, and if shee doo, shee and her husband shall make fine. Therpo-tion. It should appeare by ỹ wordes ỹ the wiues of al them that hold in Capite, cannot haue dower at any mans hands but onely the kings, if his grace will, for in that his grace hath a prerogatiue aboue al comon persons as well for that shee shall therby hold of his highnes in chiefe, as for ỹ shee shall not marry without licence: for so shee might be mar-ried vnto ỹ kinges enemy, & therby the strength of ỹ crowne enfeebled. Therfore it is prouided, that his highnes may as-signe the dower, whether ỹ heire be of ful age, or within age to ỹ intent, that shee before ỹ receiuing thereof shall take a corporall othe not to mary wout ỹ kings licence. The ma-ner of ỹ assignemẽt whether the heire be of full age, or wtin age, is very well set forth in the newe *Natura breuiũ.* fo. 263. in ỹ writ *De dote assignanda.* Howbeit for ỹ some things are there noted which seeme to repugne wth our booke cases, I purpose to conferre ỹ one wth the other, & see how they can a-gre. In ỹ said *Natura breuium* it appeareth, that not withstãding ỹ king had cõmitted ỹ land ouer to an other, yet ỹ wo-mã sued in the Chaũcery to ỹ king for her dower, & not to ỹ cõmittee, & in our bookes you shal see many writes brought against the cõmittee, yea & in some of them ỹ shee recouered her dower, and the king not made party to the same, as the

booke is in H.4. H.7.f.1. which is more at large. *Aid de roy* 33. where ỹ writ of *Dower* was brought against the kings cõmittee, who pleaded in barre wõut praying in aide of the king, & the barre was found against him, & notwithstanding ỹ it did appeare vnto the Iustices, ỹ the king might be touched therby, yet would they not surcesse, but awarded ỹ ỹ demandãt should recouer, & toke for their cause the statut of *Bigamis*, *A.* 4. *E.*1. *cap.*3. which saith in this manner: *De dotibus mulierum vbi aliqui custodes hæreditatis maritorum suorum custodias habent ex dono vel concessione regis, Siue custodes rem petitam teneant, siue hæredes dictorum tenementorum vocentur ad warrantum si excipiant quod sine rege respondere non possunt, non ideo Supersedeatur, quin in loquela prædicta prout iustum fuerit procedatur.* This *Natura breuium*, and this booke of 4. H.7. seeme not to agree. For where takes shee any oth, where shee recouers by a writ of dower in the cõmon place? which othe shee must needes haue taken if shee had sued in the chaũcery, or how may the cõmittee endow her, when percase he will endow her of more then she ought to haue, or ẽdow her where she is not dowable by the lawe? whercunto one may aũswere in this wise, that his wrongfull endowment shall not conclude the kinge, but that hys grace may reformc the thing whẽ he will, & since he hath cõmitted al his interest ouer, *Durante minore ætate*, his grace may permit thendowment made by the committee, if it bee rightfully made to stand: & specially because of the statut of *Bigamis*, which allowes it so to be. And notwithstãding she take no othe, yet can shee not mary without the kinges licence, for this endowmẽt by the cõmittee is the kings ẽdowmẽt vpon the matter, for that, ỹ he holdeth in right of ỹ king which continues still gardein, notwithstanding any such cõmission or grant of the wardship. Therfore it should seme ỹ after the ward cõmitted ouer (as is afore said) it is at the election of the woman, whether shs will sue to the king in the chaũcery, or at the comõ law against the cõmittee. But

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if the king do but committ the warde ouer *Durante bene placito*, otherwise it is, for there she must sue onely to the king as appeareth in *Dower* 169. 8. E. 2. And note well that thys statut of *Bigamis* before recited will also, that if the heire of ẏ husbād be vouched to warrāty being in the custody of those committees, ẏ the Justices shall not surcesse no more then when the writ of dower is brought against ẏ cōmittee, contrary to this brāch of the said statut are there diuers bookes as *M.* 18. *E.* 3. *f.* 38. *H.* 8. *E.* 3. 15. & *aid de roy.* 64. *H.* 18. *E.* 3. where the said cōmittee cāe in, ẏ heire being vouched in their ward & shewed how they held of ẏ kings lease & praied in aid of ẏ kinge & had it, whereat I do not a little maruell because of this statut of *Bigamis*, which was neuer spokē of, ne yet remēbred in these bookes, their iudgmēts as it should seme being directly against this statute. Howbeit ẏ maner of the lease doth not there certenly appeare, ẏ is to say, whether ẏ wardship were grāted *Durante bene placito*, or *Durante minore ætate*, for that would make a difference, as I haue said before. Also the booke is P. 39. E. 3. f. 8. wherin a writ of *Dower* brought against the committe of ẏ cōmittee, there was aid graunted of the king, but ẏ seemes to be out of the cōpas of ẏ statut of *Bigamis*, which speakes only of thē ẏ haue it of ẏ kinges grāt, & so hath not ẏ secōd cōmittee, therfore learne what ẏ law wil in these cases, but if ẏ wardship be cōmitted to ẏ wife wout any exceptiō or forprise of her dower, she by ẏ is cōcluded to claime any dower during ẏ said wardship, as it may appere in M. 2. H. 4. f. 7. in ẏ said *Natura brevium f.* 264. *D.* It is also said ẏ where liuery is made to ẏ heire before ẏ womā sue for her dower in the chaūcery, & in ẏ said liuery there is no sauing made for her dower, ẏ thē she must pursue her writ of dower against her heir: & ẏ reasō ẏ is there made is, because ẏ kinge hath made liuery generally wout any reseruation of *Dower* to bee assigned by his highnesse: wherunto I aunswere, that when liuery is sued before assignment of dower, there is most commonly in the writs of liuery a sauing made for her dower, if it so be that she were

found the kinges tenants wife in the office, and shee being so found, if the heire sue a generall liuery, leauing out these woꝛdes, *Salua dote*, oꝛ *retenta dote &c.* it is a good cause foꝛ the kinge to reherse the whole, foꝛ the liuery is misused in that case, foꝛ that I learned of Justice *Spilmã*, which noted it so in 11. of H. 8. but if shee be not found wife in the office, the heire may sue his liuery wꝫout any such sauing, to say, that the king by making such a liuery should waiue the aduauntage of his pꝛerogatiue in the dower, that seemes not to bee true, vnles the said waiuer were by expꝛesse woꝛds, wheꝛfoꝛe it seemes the heire in that case after liuery is not boũd to yeld vnto her dower, but her onely remedy is to sue foꝛ the same to the king, & that must be first vpon an office (as I thinke) finding that shee was his tenauntes wife, *Ideo quere*, & learne whether shee may haue dower in any case, either in the Chauncery, oꝛ by wꝛit of *Dower* at the common lawe against the committee oꝛ the heire, vnles shee be foũd wife first by office as is afoꝛesaid, except it bee in cases where the king will refuse his pꝛerogatiue. And note that like as the king hath a pꝛerogatiue by this statut to yelde dower to ẏ wife of his tenant, so hath his highnes a pꝛerogatiue by the common law to withhold dower from the wife of his tenãt which no comon pꝛsõ hath. As put case in a wꝛit of *Dower* the heire be vouched in the kings ward, & the tenant shewes foꝛ his line the feoffement wꝫ warrãty of ẏ husbãd which is father to him ẏ is vouched, yet ẏ notwꝫstanding shee shall recouer her dower against ẏ tenant, & not against the heire, because that els ẏ king should lose the wardship of the lãds, where ẏ woman may (wꝫout her losse) as well recouer her demaũd against ẏ tenant, as shee should against the king, & yet if the king were a comõ pꝛsõ in that case, he should lose the wardship of so much as shee demaũdeth. And this booke is H. 26. E. 3. fo. 58. where it is said, that the kinges committee of the wardship shal not haue the pꝛerogatiue and therwith agrees H. 8. E. 3. fo. 15. And note ẏ like as ẏ king hath pꝛero-

prerogatiue against the wife that bringeth the writ of *Dower* so shall hee haue prerogatiue against the tenaunt in the said writ of *Dower*: for notwithstanding that the tenant in the selfe same case haue iudgemẽt to recouer ouer in value against the heire which is in the kings ward, yet hee shall haue no execution of that recouery till the lande be sued out of the kinges hands. Howbeit M.27.E.3.fo.87.is contrary to the saide booke of 26.E.3, *Ideo quere*. and learne & enquire whether a woman being thus endowed at the hands of the feffee of her husband of such lands as hee died not seised of, & whereof the king at that time can haue no wardship, whether shee may marry or not, without the kings licence, & it semes shee cannot, for any words cõprised within this statut. And it appeareth in 26.li.ass.p.57.that where a woman was endowed by gardein in chiualry, and afterwardes the garden committed treason, wherby the seignory was forfeit to the king, that after this forfaiture she should holde of the king, & not of the heire which was in the reuersiõ, in which case thẽ she cannot marry without licence, as me thinketh. Thẽ further it is to be sene to what lands the statut doth extend vnto, & to what not. It extendes to lands holden in *Capite*, wherof any woman claymeth dower, as may appeare by the words of the same statute, & not to any other lãds, for if the king haue in his custody bishops temporalties during ỹ time the See is vacant, & one that holdeth of those temporalties by knightes seruice dieth, his heire being within age wherby the king hath ỹ wardship of his heire, & endoweth his wife, in this case she shall make no oth, but marry wõut licence. Like law is it where shee is endowed of landes that are holdẽ of him that is the kinges highnesse ward by reasõ of a tenure in capite, for in both these cases the land wherof dower is demaunded, are not holden of the king in chiefe, & this doth appeare in the newe *Natura breuiũ* fol.264.4. and yet in both those cases shes is endowed in the chauncery, but

what is that to the purpose? for so shall the heire in those cases sue liuery of those landes, & yet they bee neuer the more for the holden in chiefe, but onely vsed for a solempnity, because they were in the kings handes once by office, which is matter of record. The wordes of the statute bee further: *Et si se maritauerint sine licencia Regis, tunc rex capiet in manũ suam nomine districtionis omnes terras & tenementa quæ de eo tenent in dotem &c.* These wordes be knit in a copulatiue to ỹ former words contained within this chapiter, that is to say, where she hath demaunded dower, & is sworne not to mary, but if shee will neuer demaũd dower of the landes holden in capite shee may marry where shee will: for the words of the statut be: *Quod assigna bit viduis dotem, si viduæ illæ voluerint*: and so thinkes Iustice *Fitzherbert* in hys *Natura breuium* fol. 175. Howbeit by the booke in 40. li. all. 36. it appereth ỹ the wife neuer demaũded dower, & yet had allowãce of it, & did mary also wout licence, & yet paied no fine, and therfore the case was: The kings tenant in taile in chiefe made a feffement by licẽce, & tooke estate againe to him & to his wife & died, ỹ wife takes an other husband & dies, after whose death ỹ auncient estate taile being found by office, the licence was holden void, because the king was deceiued therin, & the secõd baron dyuẽ to answer for the meane profits of two parts of the lãd, but not for the third part, because she was endowable, *quod nota*. A womã tenãt in dower of no mãz assignemẽt & some there thought she should forfeit her dower, beecause shee was party to ỹ deceit. Howbeit this case seemeth not to be properly wthin the compasse of this statute. Also *Fitzherbert* in the said *Natura breuium* fo. 174. thinketh, that where the king hath vsed to graunt to other the marriage of hys widowes, that a cõposition wth the grauntee made for the sãe (whether it be made by the wife or the husbande) is as good as if it were made with the king, yet cannot the graũtee in such case cõpell her to marry, for ỹ should be contrary to the

statut

statut of *Magna charta ca.7.* which will that shee shall not be constrained to mary by distresse, but if shee will shee may liue sole. Howbeit at this day by the statut of 32. H.8. ca. 46. the composition is geeuen to the maister of the kings wards & liueries with iii. of ỹ counsell of the said court. And likewise authoritie is geeuen to them where the kings widowes marry thẽselues without licence to take a reasonable fine by their discretions according to the statut of *Prerog. Regis*, which statut plainly setteth forthe what hath bene vsed to bee don in such cases, that is to say, the value of her dower by one yere, & therwith agrees the newe *Natura breuiũ fo.*174. And for that fine the King shall seyse all the landes & tenements so holden in dower, as it apperes by the letter of the statut. Howbeit the *Register* geueth that the kinge may seyse aswell the land of the husband as of the wife, because the mariage is a wrong don to the kinge, but ỹ statut is contrary to that, and therfore *Fitzherbert* in the said *Natura breuium folio.*174. thinkes it to be no law: For as well might the lands that the woman hath of her inheritance, be then seysed, wherefore no other land ought to be seised, then that she holdeth in dower, as it appeares in the said *Natura breuium* f.165.C. And learne whether the woman obtaining dower at the hands of the cõmittee, or of the heire of lands holden in capite, without making any othe, may marry or not, without licence, & as me seemeth shee cannot, for as soone as she is endowed of those lands, shee is the kings tenãt, & not tenant to the heire which is in the reuersion: for if a trespas be don vpon ỹ land, shee shall haue a writ out of ỹ chancery ỹ one such hath entred vpon the kings possessiõ, & the auowry to be made by the king resteth onely vpon her, & so is the opinion of *wood* in Pa.1.H.7.f.17. And yet the reuersion is in the heire only, for if shee do wast, the heire shall punishe her for it, and not the kinge: Then further let vs see of what force this dower is, whẽ it is made in the chãcery, & how she shalbe admesured in ỹ sãe, if it be two great, for if it be to little, there is no remedy for her but to stãd to her own

harms if she in the chauncery once did accept it, not forcing whether she were then within age, or of ful age, as it may appere in E.18.E.3.fo.29. The dowment in the chauncery is of this force, that whether it be by right or by wrong, it cannot be defeyted by way of plee without a suit made in ỹ chauncery for the diseling thereof, as it appeareth in M.17. E.3.fo.71. & *Dower* 128. M.31.E.3. And therfore in a very strog case one doth trauerse the office which is in the chaūcery by reason the land is holden of him by knights seruice, & not of the king, and hath an *Ouster le maine vna cum exitibus*: yet if shee were endowed before in the chauncery vpon the office, her dower remaineth vndefeted notwithstanding his trauerse and *Ouster le main*, vntil an other suit be made in the chauncery for the defeting of the same. Howbeit in this case if the dower bee to much, the lord that tenreth the trauerse may haue a writ of *Admeasurement* at the common lawe, and so cause it to be admeasured without suing to the kinge for the sāe. For it is no losse to his highnes though she be admeasured, seeing the land is not holden of him, as it appeareth *Admeasurement*. 4.E.7.H.2. and there it is agreed that the heire shall haue a writ of *Admeasurement* of assignement of dower made by his auncestor, *quere tamen*. But ỹ abatour shall not haue a writ of *Admeasurement*, nor *Garden en fait* of assignement made by *garden en droit*, nor if the heire were of ful age at the death of his auncestor, & died, his heire within age, the garden of his heire shall not haue a writ of *Admeasurement*. But take the case to be, that a woman is endowed in the chauncery, the rest of the land there remaining still in the kings handes, if it be surmised by the heire or any other for the king, ỹ the lād assigned to the wife, is not extended to the very value, but that it is more in value then it is extended for, now vpon this surmise there shalbe a newe extent made which being returned into the chancery, a *Scire facias* shalbe awarded against ỹ woman, & if shee be warned, & cōe not, or appere & say nothing, shee shalbee in wly endowed, and

as it is said in *Natura breuium folio 265. b.* Nowe let vs see farther, at what time the woman may aske her dower in the Chauncery, and when she is endowed & loses her dower vpon a recouery had against her by an *eigne title*, how she shalbe recompenced. If the husband haue land in diuers Counties whereby after his death there be awarded seuerall writs of *Diem clausit extremum* into euery of those Counties, she shal not be endowed vntil such time as all the said writs be returned againe into the Chauncerie, as it may appeare in *Liuerie 29. H. 16. Ed 3.* And note that when shee is endowed in the Chauncery, & afterwardes loses by a recouery vpon an *Eigne title*, then she hath none other remedy but to cause the record of the same recouery to be remoued into the chauncery, & vpon ỹ first record, wherby it appeared shee had dower & this other record of the recouery, shee shal haue a *scire fac.* reciting both ỹ records against ỹ tenãt of the two partes to render ỹ said ỹ. parts into the kings hands, & to be newly endowed of the same, but not to recouer any damages, notwithstanding damages were recouered against her, and this appeareth 43. li. all. p. 32. Now to the last braneh of this statute, which is, that women ỹ hold of the king in chiefe any inheritance, of what age soeuer they be, shal likewise swere, not to mary &c. By the order of the common lawe before the making of this statut all women ỹ were within age, and inward, should when they came to ful age, be maried by their lords, euery one of them w̃ their portions, & if they were of full age at the death of their auncestors, yet should they neuertheless be in the lordes keping vntil they were married by the aduise & dispositon of their Lordes. For as *Glanuill* in his 7. booke ca. 12. that be wrot in the tyme of kinge H. 2. saith *Sine dominorum dispositione vel assensu, nulla mulier hæres terræ maritari potest de iure vel consuetudine regni*: and therefore saith he, if a man haue issue, one or mo daughters which be his heires apparant, & marieth any of them without ỹ assent of his lord, that he therby forfeits his inheritance by the

lawe

law and custome of the Realme, so that hee shall neuer recouer it againe but only thorough his Lords mercie, & that for this cause: For when the husband of such a woman shal doe his homage for the tenementes so holden by knightes seruice, it is requisite to haue the lords wil and assent, lest he be compelled to receiue homage of his mortall enemie, or some other vnable personage, nyuertheless if the tenant sue to his Lord for licence to mary his daughter, the Lord is bound to consent, or els to shew cause why shee should not, and if he will not, the woman may marie where shee lisses, without his assent. And the said *Glanuill* further saith, that tenant in dower cannot in likewise mary without the assent of him that is her warrant, that is to say, the heyre: And if shee doe, she shall lose her dower, and yet there the husband shall do no homage: but what then? he shall doe fealtie, and for that cause also she shall haue licence. And further saith, if she hold of diuers Lords, it is sufficient for her to haue the assent of the chiefe lord. And he saith, ỳ women being in ward, *Si de corporibus suis foris fecerint*: With which wordes as I vnderstand them, be, if they commit fornicatiõ & that be proued, then they that offend shalbe disherited, so that her portion then goes to ỳ other sisters ỳ haue not in the like offended. And if they al offend, then ỳ lord shal haue the inheritance by way of eschete. Yolwbeit saith he, where they be once maried by the lords assẽt, and after become widowes, they shalbe no more in ward, but yet if they marry againe, they must haue his assent for the reasõ before made. But then after they haue bene once maried, they shall not forfeit their inheritance for their incontinency, so that it appeares plainly here by *Glanuill*, that this whole statut of prerog. should be but a confirmation of the comon lawe. And that the lawe was so as *Glanuill* tooke it, it may partly appere by ỳ said statute of *Magna charta* ca. 7. For the wordes are not onely, *Quòd vidua securitatem faciet quod se non maritabit sine assensu nostro, si de nobis tenuerit*; but are also

vel sine assensu domini sui, si de alio tenuerit. And *Bracton Li.i.* agrees also with *Glanuill.* Howbeit he saith, where a woman in the life of her auncestors marries without the assent of the Lord, or where the widow marries without the assent of her warrant, that the inheritaunce or the dower shal not now bee forfaited, although in old time it was. And farther saith, that the heire in socage beeing a woman shalbe married by the lord, like as shee should if shee were heire of lands holden by knightes seruice. And further saith that the heir male shalbe maried by the lord more thē once, that is to say, as often as he shal become vnmaried in the time that he is vnder the age of xxi. yeres. But now by the statut of Wl. i. cap. 22. the lords are abridged of their power in these marriages of the heires females, for if they now bee within the age of xiiij. yeres at the death of their auncestor, & the lord doth not marry thē before they come to xxi. yeres, then shall they recouer their heritage without any thinge geeuen either for the ward or for the marriage. And if they malitiously, or through euil counsel refuse to marrie where their lords doe appoint them without dispargement, then shal their lord hold their land vntil they come to the age of 21. yeres and longer, vntil they haue taken the value of the mariage. Out of this statut (if it be well considered) a man may gather that the common law was no lesse then is here recited. And this statut was made about the third yere of King E. i. a litle before that *Britton* beganne to writte hys booke, for *Britton* fo. 169. saies, that the mariages should bee offered to the heires females before they accomplish the age of 14. yeres, & if not, the lord shal lose his right in the sayd mariages. I suppose that the Printer mistoke the number of the yeres, and should haue printed sixteene, where is but fourtene, and therefore it is good to see other copies for this matter. And *Britton* also saith, that if he or shee haue beene once maried by the lord, or in the life of their father, or

since

once agreed with their lord for their mariage, they shal neuer againe be married by him, but may marry themselues where they list, so that they hold nothing of the king. And fo.168. he saith, that the king shal haue the mariage of al the heires females where they hold of the king, of what age so euer they bee, as often as they shal be to marie, so that they cannot mary without the kinges licence. Thus is the last clause of this chapter expressely proued by *Britton*, that the common law did still remaine as it was for the mariage of the heires females in the kinges case, and not altered or abridged by the said estatut of West. primer, & therefore was the statut in the 39. yere of king Henrie 6. the last chapter made in this wise: *Item de auisamento, assensu, & auctoritate prædictis ordinatum est & stabilitum, quòd mulieres existentes quatuordecim annorum tempore mortis antecessorum suorum, absque questione, seu difficultate habeant liberationem terrarum & tenementorum suorum sibi descensorum, quia sic lex istius terræ vult quòd ipsi haberent.* Howbeit, this statut prouides not where they bee within the age of fourteene yeres at the death of their auncestour, *idem quere.* For as our late books goe since *Brittons* time the king hath lost his Prerogatyue vppon what occasion I know not, but I would gladely learne. For *Fortescue* sayes H.35. H.6. folio 52. that when the heire female sues her liuerie, shee takes no oth that shee shall not marry, as the kinges wydowe doth, and therfore sayth he, it should seeme shee should make no fine, if she marrie without licence. Howbeit *Littleton* sayes, that if the heire female bee of the age of xv. yeares at the death of her auncestor, and marrie her selfe without lycence, that shee shall make a fine, for it amounteth to an alienation. For after issue had, the husband is become the kinges tenaunt, and hee only shall doe homage in hys owne name. And yet afterwardes H.15. Ed.4. folio 13. the same *Littleton* sayes, that the latter clause of the same statut is voyd, for the

daughter

daughter which is in ward marrying her selfe to an other without licence shal not make fine to the king. Thus by the argument of the said booke of 35. H. 6. it appeares that they take the king to be bound by the said statut of W. 1. & make him no better then a commō person, where at I haue no little maruaile, since he is not named in the said statut. For in the said booke H. 35. H. 6. *Gard. P.* 71. it is agreed by the court that if the king after the age of 14. yeares and before 16. doo mary ỹ heire female, shee shall haue libertie forthwith vpon the mariage, although shee then bee not of the age of 16. yeares, beecause that shee was of full age beefore as it is there said, that is to say, as soone as shee was 14. And the ii. yeres ouer is but onely geeuen for the mariage, which when it is once had, and the 14. yeares past, the kinge or Lorde leese their interest. And so it was graunted, that if shee were married beefore the age of 14. and after her husband dies before the said age, whē shee comes to the said age of 14. shee shall haue liuery. And there it was also said, that these two yeares were geuen to the lord to tender her mariage in, for the tender beefore was void, beecause is was wō in the age of 14. yeares. But note that if the heire female being vnder the age of 14. yeares, falleth into the kynges hands as ward beecause of certaine landes that her father held of the king in chiefe, and by reason therof the king hath also the lands in ward which are holden of other in socage, in this case when shee comes to the age of 14. yeares, and is vnmaried, she shall not haue liuery of these lādes holden in socage, & yet by reason of them ỹ king hath not the mariage of her. But what then? shee cannot sue her liuery by parcelles, and that is the cause that the whole lande shall tarry in the kinges handes, till a whole liuery may bee sued of them all. And this appeares in the newe *Natura breuium* folio 256. And last of all note, that this latter clause extendes not to women that clayme by purchase, but onely by descent. And therefore it appeares

Liuere

Liuere 31.*H*.15.*E*.3. that where it was found vppon the *Diem clausit*, that the wife was iointly infeoffed with her husbād, shee had an *Ouster le maine* without finding any suerty of her mariage. And note also, ỹ by the cōmon lawe if one will mary the kinges nief, that is to say, his bond woman with out licence, he shall pay a fine vnto the king, as appeares in 33.*E*.3.*Li.ass.Trauers*.36.

¶ *Le Roy auera homage de chescun parcener, & sur partition chescun de eux auera part del terre tenus de roy. Cap.5.*

ET si vna hæreditas quæ de Rege tenetur in capite, descēdat pluribus participibus, tunc omnes illi hæredes facient homagium Regi, & illa hæreditas quæ de Rege tenetur, participabitur inter hæredes illos, ita quod quilibet eorum extunc partem suam tenebit de Rege.

This statute is somewhat declared by a statute made long tyme before, that is to say, in the 14. yeare of kynge Henry the thyrde, called *Statutum Hiberniæ de cohæredibus*, which for the better declaration of this prerogatiue I haue also here noted.

Henricus Dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ & Normannī, comes Andigauiæ, dilecto & fideli suo Gerardo filio Mauricij Iusticiario Hiberniæ salutem. Cum milites de partibus Hiberniæ nuper ad nos accedentes nobis ostenderunt, quod cum hereditas deuoluta sit inter sorores in terra nostra Hiberniæ, Iusticiarij nostri in eisdem partibus itinerantes incerti sunt, vtrum postnatæ sorores tenere debeant de primogenita sorore, & ei facere homagium, an non. Et quia prædicti milites petierunt certiorari qualiter in regno nostro Angliæ in casu consimili hactenus vsitatum fuit, sic ad instantiam eorundem vobis significamus, quod in regno nostro Angliæ talis est lex & consue-

consuetudo in hoc casu, quòd si quis de nobis tenuerit in capite, & habuerit filias hæredes, ipso patre defuncto, antecessores nostri habuerunt, & nos semper habuimus, & cepimus homagium de omnibus huiusmodi filiabus, & singulæ earum tenerent de nobis in capite in hoc casu. Et si infra ætatem fuerint, nos habebimus custodiam earum, & maritagium singularum. Si autem de alio domino tenuerint, & ipsæ sorores infra ætatem fuerint, earum dominus habeat custodiam & maritagium singularum, & primogenita tantùm faciet homagium domino pro se & omnibus sororibus suis & aliæ sorores, cùm ad ætatem peruenerint facient seruitia dominis feodi per manus primogenitæ. Nec potest primogenita ea ratione vel occasione, á postnatis sororibus homagium vel custodiam, vel aliquam aliam subiectionem exigere vel habere. Quia cùm omnes sorores sint quasi vnus hæres de vna hæreditate, si primogenita posset habere homagium aliarum sororum vel custodiam petere, tunc esset illa hæreditas diuisa, ita quòd primogenita soror esset simul & semel de vna hæreditate domina & hæres. Hæres autem suæ partis, & domina sororum suarum, quod quidem in isto casu fieri non possit, cùm ipsa primogenita nihil posset petere plus quám aliæ sorores, nisi capitale mesuagium ratione eineciæ. Præterea si primogenita huiusmodi homagium á postnatis sororibus suis acciperet, esset quasi domina earum, & habere posset custodiam earum, & filiorum suorum, & hoc esset quasi committere agnum lupo ad deuorandum. Et ideò vobis mandamus, quòd prædictas consuetudines quas in regno nostro Angliæ habemus in hoc casu, vt predictum est, in terra nostra Hiberniæ proclamari ac firmiter teneri facias & obseruari. In cuius rei &c. Teste me ipso apud VVestmonasterium nono die Februarij, Anno regni nostri decimo quarto.

Before the making of this statut called *Statutum Hiberniæ*, it appeareth by *Glanuill Li. 7. cap. 3.* which wrote in the time of king Henry 2. that the husband of the eldest daughter should do homage vnto the Lord for the whole inheritaunce, and that the other daughters or their husbandes

should

should do their seruice for their tenements vnto the chiefe Lord by the hands of her eldest sister, or her husband, and yet they for the same should not bee bound to doe any homage or fealtie to the eldest sister or her husband during their liues, ne yet the heires that come of them in the first degree or second degree. But the heires in the third degree by the law of the land were bound to do homage, and to pay relefe for their tenemẽts vnto the heire of the eldest daughter. *quod nota.* And the reason of it after the mind of *Bracton Lib.1. de hom capiend'*, which agreeth wᵗ *Glanuill* in this, ỳ ỻ hẽ issue descendeth of them to the third or fourth degree, it is not like that issue should faile of their bodies, & then may the heires of the eldest daughter take homage very wel, for it is vnlikely that the eldest daughter or her heires should then haue the same by discent, for these be his wordes: *Quia cùm sint hæredes tres de hærede in hæredem, extunc vix poterint deficere, & ideo tunc sequitur homagium absque dampno & periculo donatoris.* For if there were likelyhood of the discent, in this case the taking of homage should be rather hurtfull thẽ beneficial: For by the auncient lawes if one had infeffed an other to hold of him, and had taken his homage, he could neuer be his heire afterwardes, but the next vnder the feoffor, & his heires of the kindred should rather haue it. As put case before the statut of *Quia emptores*, the eldest sonne had infeoffed the middlemost to hold of him, & had taken his homage, the middlemost dieth without issue, the yõgest should haue had ỳ land, & not the eldest, because of the homage ỳ he tooke: howbeit if there were no yonger sonne or any other heire, thẽ the feoffor might claime the land again by eschete & not otherwise: for as long as there were any, the feoffor or his heires of whõ the lands were so holden might not haue it. And that *Bracton* sheweth also in his first booke in ỳ title *de maritagiis reuersis ad donatorẽ pro defectu hæredis*, for he hath this text or saying there, *quod homagiũ expellit dominicũ, et restinebit*

retinebit seruitium, & quod non potest quis esse dominus & heres: so that you may now perceiue that this statut of Irelande agreeth with *Glanuill*, sauing that *Glanuil* dilateth or declares the common law farther then this statut doth. Also *Bracton. Li.* 1. sayth further in his title of Homage, that if the eldest daughter in this case will preuent the time and take homage before shee needeth, she by that leeseth the benefite of the discent, and saith that ỳ reason why the seruice ought to be done by the eldest for them all, is, because the lord shal not be driuen to take his seruice by parcel mele, and further saith, that although the eldest may not haue homage of her sisters forthwith but must tarry a time, yet shal they out of hand doe fealtie vnto her, and al the other seruices that are to be done, and the eldest shall doe them ouer, which is contrarie to *Glanuill*, for he saith the other sisters shal doe neyther homage nor fealtie. Howbeit *Britton* fo. 175. agreeth vñ *Bracton*, and there setteth forth the manner of the fealty by the yonger sisters to be done to the elder and saith, that it is at the election of the lord, whether he will take homage and the other seruices by the handes of the eldest only for them all, or els of euery sister seuerally for her seruice, for if hee might not so do, ỳ lord in proces of time might happely lese the wardshyp of the heires of the other sisters, because of the wordes in the writ of ward, which are, that the auncestors died in his homage, and that would be hard to trie when ỳ homage was euer done vnto him only by the eldest sister. And *Bracton* in his title of homage sayth: *Cum quelibet soror de facto acapitauerit dño capitali hoc reuocari non poterit a primogeñ vel eius marito, sed semper quod factum est tenebit, quia capitalis dñs quod ei oblat̃ est non recusabit, sed siue tenuerint de dño Rege siue de alio cum homagium factum fuerit siue ante tertiũ here. siue post statim sequentur releuium & alia seruic.* & a little before that saith, *Si plures sorores de domino rege tenuerint in capite tunc primogenit̃ missa omnes acapitabunt & homagiũ facient dño*

Regi, and therwith agreeth *Briton*. fo.171. And yet fol.168. sateth that theldest onely shall do homage vnto the king for her selfe & her sisters. Thus haue you now therposition of ỹ said statut of Irelād by ỹ old writers, by which said statut & the said writers it appeareth ỹ this statut of Prerogatiue is but a confirmation of the common law, & doth only set & declare what the kings Prerogatine is when lands holden in chiefe discende to two coparceners. For in this ỹ king hath a prerogatiue aboue a comon persō, aswel for that they shal severally hold of his highnes, as for that ỹ his highnes shal make ỹ partictō, for whether they be of full age at the death of their aūcestor or wīn age or some of thē of ful age & some of thē wīn age, none of thē ỹ be of full age shal haue any liuery but with a partition, and that for the kinges benefit: because that vpon the partictō euery one of them shall haue for his portion some parte of the lands that are holdē of the king in Capite. For if some should haue for their portion only the landes holden of other, then the kinge should lose his prerogatiue in those lands hereafter for euer, because ỹ they that haue them when they shall dye, hold nothing of ỹ king in capite, & so might the kinge bee diminished of hys auncient rights of the crowne, which were against all naturall equitie. Wherefore the lawe was euer they should al hold of the king. And that appeareth by the writs of liuery, in which writes there is a prouiso that euery one of thē shal haue in her purparte parcel of the lands that are holden of the king in capite, as you may see in the new *Natura brevium* 259.e. And this liuery must be sued with a partictō or else it is missued, and it cannot be sued forth vntill such tyme as al ỹ writs of *Diem clausit extremum* are come into ỹ Chauncery & returned, as appeareth *Liuere* 29.H.16.E.3. And then if all the coparceners be found of full age, thē a writ shal go out of the Chauncerie to ỹ sherife to extēd the lands, & after the

the extent returned, a writte shall go to therchetor to make partition and liuery according to the extent thereof made as appeareth in the new *Natura brevium* fo.259. But if one of the coperceners be within age and in the kings ward, then ỹ partition may bee made in the Chauncery, and then to haue a writte of liuerie to the archetour of her parte, or else it may bee wholly done in the country by the archetor like as they had bene both of full age, that is to say, shee of full age being there present in her owne person, and shee that is within age onely by *Prochein amy*, as it appeareth in the said *Natura brevium* fo.261. which writte shall bee returned with the partition and afterwardes enrolled in the chauncery. And it should seeme that if after the writ of extēt returned she that is of full age do praye a writ of liuery with a partition, that shee shall then neuer after haue a receyt if so bee that before it were so highly extended. Like law is it if ỹ partition be not egall, & she notwŧstanding wil except it. But in all those cases shee that was within age if she haue to little for her portion, shee may haue a writ of *Participatione faciendo* against her other coparcener or a *scire facias* in the chaūcery vppon the recorde of Partition, that is there, to shewe why newe partition or extent shall not be made. By which writ if they be warned & come not, or come and say nothing, the land shalbe reseised into the kinges hands, and a newe extent made in the presence of the parties, which if it bee not extended as it should be, they may pray a receyt beefore partition made: for after partition the prayer cōmeth to late. And this maye yee see in the newe *Natura brevium* fol.62, H. & in H.2.E.3, 20. & *Liuere* 6.13.E.1. but learne whether shee may defete the partition by entre without suynge any such writtes or no, because the other are in by matter of record, that is to saye by liuery, wherunto shee is also after a maner party. So is it not like ỹ case of a stranger

for a straunger that hath *eigne title* may enter vppon them after liuerie notwithstanding they haue ỹ possessiõ by matter of record. And it is saied by *Hill.* T.17.E.3.f.37. that aduowson assigned in purpartie may bee defeted by puttyng debate vppon the presentment without any other proces: And note that sometimes the king is to take a detriment by the liuerie with the partition: As take the case to be where some of them bee within age and in the kinges ward, and some of full age, & their auncestour dieth seised not onely of landes holden in chiefe, but also of landes holden of other lordes, they of full age haue liuery with a partition, nowe the king loses the wardship of as much of the lands that are holden of other as they haue liuere of, and yet if no partition had bene made the king should haue had the wardship of the whole til the heire had come of full age, as *Mombray* affirmeth M.21.E.3.f.3. And note also that of things entier the king shal haue by nonage of one of them the whole, and the other that be of full age gett no part of it ne yet liuery therof ne partition: as take the case to be this: A manner holde of the king in chiefe wherunto aduowson is appendant, discende vnto three coparceners & one of them is within age & in the kinges warde, the other two that bee of full age may sue their liuerie for the land wt a partition, but not for ỹ aduowson: For that shall wholly remaine to ỹ kinge during ỹ minoritie of her ỹ is in ward. And this appereth *Quare impedit* 1. T.31.E.3.M.38.H.6.9.M.21.E.3.fo.32. And note that if vpon partitiõ made therchetour returneth ỹ some haue their parts deliuered thẽ & some not, because they sued not to him for it, they ỹ did not sue, may at al times in the chaũcery sue out a writ vnto therchetor to haue the same deliuered vnto them, in which writte there shalbee enclosed a transcript of ỹ partition as it appeareth in ỹ said nowe *Natura breuiũ*, fol. 262, and there it appeareth also fol.263. that liuery with

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a partition was sued for landes holden in burgage: but by likelyhod it was no common burgage: For as it appeareth the heire did hys homage for the said landes. And note also that if the coparcener of ful age take ẏ part of her sister which is in the kinges ward by lease or graunt of the kyng *Durante minore ætate*, by this shee suspendes the partition. For notwithstanding shee haue the one moitie deliuered her with the profits of the other moitie, yet when her sister commeth to full age, both they shall sue a new iuery w̄ a partition, as appeareth in the said newe *Natura breuium* folio. 262. C.

¶ *Le Roy auera gard de heire marrie per son pier deins lage de consent.* *Cap. vi.*

SI mulier ante mortem anteces∫oris ∫ui qui de rege tenet in capite, ante annos nubiles maretat̄ fuerit, tunc rex habebit cu∫todiam corporis illius mulieris v∫que ad ætatem, quod con∫entire poterit. Et tunc elegat ip∫a virum maluerit habere virum illum cui premaritat̄ fuerit vel alium quem rex ei obtulerit. Nullus qui de rege tenet in capite per ∫eruicium militare pote∫t alienare maiorem partem terrarum ∫uarum ita quod re∫iduum non ∫ufficiat ad faciendum ∫eruicium ∫uum, ∫ine licentia Regis, ∫ed hoc nō con∫ueuit intelligi de mēbris & particulis earundem terrarum.

This chapter containeth two matters beinge diuers in nature, and therfore I entend to seuer and deuide the one from the other, and to adioyne the latter braunch hereof to the chapiter folowyng, because they intreate both of one thing.

This statut is but a confirmation of ẏ cōmon law. For it is writen in *Garde* 147. 13. H. 3. in this wise.

Thomas ∫ummonitus e∫t ad re∫pondendum regi quare abduxit Helenam filiam & heredem E. &c. T. dicit quòd ip∫e per a∫∫en∫um

E. in vita ipsius E. desponsauit predictam Helenam in facie eccle-sie &c. et quia predicta Helena est infra etatem & cum ad etatem peruenerit potest consentire matrimònio vel dissentire, ideo remanet predicta Helena in custodia domini Regis vsque ad etatem vt consentiat vel dissentiat &c. Here it is not set forth nor expressed what is thage in a woman to consent to matrimony, and that is all that is to be sought vppon this statut: for *Bracton* in his first booke in the latter ende of a chapter which hath this paragrafe. s. *De minoribus qui debent esse sub tutela et cura dominorum vel parentum* saith *quod femina septimo anno etatis sue potest consentire matrimonio, & virum sustinere anno duodecimo*, for he saith, *quod femina maius est capax doli quam masculus, & quod maturiora sunt vota mulieris quam viri*: So that by him it appeareth that a woman may consent to matrimony after she is vii. yeres of age. And so I iudge the lawe was at that time taken. For it appeareth in *Garde*. fo. 138. 12. E. 1. that a manne that held by knights seruice maried his heire apparaunt being vnder age and died, the lord claimed the wardship of the body, and an issue was tended against him, that at the time of the said mariage the infaunt was of thage of seuen yeares, and this issue was receiued by the Court for a good issue to barre the lord of the wardshippe of the body *quod nota*. Howbeit it appeares not by the said booke whether the heire were male or female and *wangford* sayes H. 35. H. 6. folio 41. that when a woman is vii. yeares of age her auncetter may then gather ayde to marry her, which saying argueth as me seemeth that shee is marygeable. And also this seemes to make with *Bracton*. Howbeit the law is not so taken in these dayes. For shee cannot nowe consent to matrimonye beefore the age of twelue yeares. This statute speakes onely of the heire female, and yet *Cheiny* sayeth in M. 7. H. 6. fo. 10. that the heire male shalbe taken within the compasse of the statute by an enquyrye, because

beraule the ſtatute is beneficiall: And ſo it ſhould appeare *Card* 156.30.E.1.& 128. temps E.1.where the ſonne was maried in the life of his auncester then beeing no more then of thage of v.yeares,and when the child came to thage of xij. yeares thauncester died & the court adiudged in this caſe that the lord ſhould haue the wardſhip of the body, to thentent ỹ if the enfant hereafter ere he paſſe thage of 14.yeares dyſagree to the firſt mariage the lord maye haue the mariage of him: And ſo it may appeare by this booke that this ſtatut is but a confirmation of the common law, for euery lord ſhal haue like aduauntage in this caſe as the king ſhal haue, & therwith agrees *Paſton*, H.7. H.6. fol.11.addinge further to this that by the order of the common laiwe beefore this ſtatut of Prerogatiue, if the heire would haue ſtand to the firſt mariage when he or ſhe came to the yeres of conſent, they ſhould haue paied the double value: and by this ſtatut they pay nothing, and therfore the caſe was there: The kinges tenãt in chiefe hauing a ſonne and heire of thage of 14.yeres doth mary him and dieth, the kyng offers the child mariage at the age of 14. yeres, which he refuſeth, & holds him ſelfe to the firſt mariage, & aiudged that thenfant might ſo do, and that for the ſame hee ſhould neuer pay the double value ne ſingle of his mariage; and there *Babthorp* ſaieth, that if ỹ woman had died the heire being within ỹ age of conſent, ỹ king ſhould haue had the mariage of the child, notwithſtanding ỹ he was once maried in the life of his auncester, for it was no mariage, but at pleaſure: & therwith agrees *Briton* fol. 196. Yea although the wife had died after the yeares of conſent & before the childe had come to thage of xxi.yeres, *quære* of this matter, for I am enformed that the laiwe is not taken at this day as the ſaid booke is in 7. H.6.

¶ *Le Roy auera fine pur alienation ſon tenant ſauns licence. Cap. vii.*

DE Serieantis alienatis ſine licencia regis conſueuit rex arcuſtare huiuſmodi ſerieantias per rationabilem extentam inde faciendam.

It appeareth by *Glanuill* in ỹ beginning of his ſeuenth booke ca. 1. fo.44. that euery free man hauing land whether hee had an heire apparant then liuing or not, or whether the ſaid heire apparant would conſent to it or not, yet might he geue ſome reaſonable portion of his land with his daughter or any other woman in mariage, or to any man that had done him ſeruice, or in almes to any religious houſe, or to any other whom he would, ſo the ſaid gift were made in his health, for in extremitie of ſickneſſe he might not be ſuffered ſo to do, leaſt it ſhould be thought to be done rather of a rage & fury of ỹ mind, which through ſickneſs for the moſt parte commeth to men, then of any good diſcretion and ſo might he in hys gift excede meaſure. How be it ſuch a gift in ſickneſs was euer good with the conſent of the heire or with his confirmation. Againe if hee hadd many ſonnes, he could not without the conſent of his heire apparant geue any portion of his enheritance to any of ỹ yonger ſonnes, for ſo myght he diſherit theldeſt through affeccīō that the fathers lightly beare towards their yonger ſonne more thē towardes theldeſt. But of his purchaſed lands he might geeue ỹ younger a portion whether theldeſt would or not. And if hee had none iſſue he might geeue away al his purchaſed lands. But of ỹ lands of his inheritance he might geeue away no more but a reaſonable portion. And if the landes were departible amongſt ỹ heirs males, then might the father in his life tyme geue euery childe what portion he would, ſo it exceded not ỹ portion ỹ ſhould diſcend vnto him. And in that caſe whether the gift were of landes purchaſed or of inheritance, it made no matter. Howbeit neyther Abbot nor Byſhop might in any of theſe caſes geue any portion of their landes away,

without the kings assent or his confirmation, because their baronies be of the almes of the king, or of his progenitors. Hitherto haue ye heard what *Glanuill* hath said. After this was the Statut of *Magna charta* made, where in the 31. chapter thereof it is written. *Nullus liber homo det de cetero amplius de terra sua, vel vendat de cetero, quam vt de residuo terre sue possit sufficienter fieri dño feodi seruicium ei debitum quod pertinet ad feodum illud.* Which statut is but a confirmation of the common law, as it doth appeare by that that is written in *Glanuill*, for so one that had held by knightes seruice if he might haue ben suffered to alien the greatest part of his lād he would haue alienes the same peraduēture to hold of him but in socage or by some small rent, & then hauing so little a fiefod left to him selfe, how had he bene then able to haue done ẏ seruice of a knight or a man of warre, or what should his lord haue had in ward to haue found one to haue done ẏ seruice, surely little or nothing. Wherby the strength of the realme might haue much decayed: therfore it was a reasonable law to restraine him as me seemeth. Howbeit *Bracton* in his first booke vnder the title, *Si ille cui datum est rem datā vlterius alteri dare possit.* disputes this matter after a sort that is to say, whether ẏ tenant may enfeffe another against the lords will or not, & he there affirmes he may, yea & ẏ to hold of him by what seruice he wil, & calleth it *Dampnum absque iniuria*, seeing ẏ though the wardship bee not so good after alienation to the chiefe lord as it was before, yet the reliefe is as good in euery point, & then if the lord be serued eyther of the wardshipp or relefe, hee hath al that knightes seruice requireth. Howbeit saith he when the tenant is so disposed to sell his land, the lord shalbee preferred to the sale thereof before a straunger geuing as much as another wil. It seemeth by *Bracton* that it was very doubtfull notwithstāding the statut of *Magna charta* whether ẏ kinges tenaunt myght

alien

alien his whole tenaunry or not. And therfore was the statut of *Quia emptores terrarum* made, where it is prouided that from thencefoorth which is in the 18 yeare of king E.1. after *Bractons* time, it should be lawfull for euery free man to sell his lands or tenements or any part therof at his pleasure to hold of the chiefe lord by the same seruice that the fee for held. Prouided alwaies ỳ by any such sales there comes no lands to mortmain. This statut remedies the mischiefe that was found in the wardship, but not the other mischiefe that is to say touching the defence of the realme. For when one mans liuing is so dismembred neuer a one of them is able to do the seruice of a man for want of liuelod, yea & much more vnabler since this statute, then beefore. For beefore where he gaue it to hold of himselfe, hee reserued some what in place of the land ỳ went from him, where as now he can reserue nothing of common right. Howbeit notwithstanding that this statut of *Quia emptores terrarum*, made it lawfull for al other mennes tenaunts, yet was it not lawfull by the said statut for the kinges tenants so to doe, that is to say neither to alien the whole, nor any parcell therof without ỳ kinges licence. And that appeareth by *Britton*. fo. 88. Which speakes generally ỳ the kings tenãts in chiefe cannot dismẽber his fees wõut his licence. And because that beefore ỳ time of king E.1. they might haue aliened wõut licence to hold of thẽselues, as other mens tenãts might haue don in the like case, & thinking it more lawfull for them so to do after ỳ making ỳ said statut of *Quia emptores* thẽ beefore, it was thought good to prouide some stay for ỳ same by this statut of *prærogatiue*. And yet by ỳ words of the other chapter folowing it appeareth that ỳ kings tenãt by graund seriãtie, could neuer haue aliened any lands holden by graund seriantie wõut ỳ kinges licence. For that was so high a seruice, as *Bracton* in his first booke in the title *de magnis seriantiis* names it *Re-*

gale

gale seruitium, & saith it was first inuented win this realme in the time of the conquest, ỹ they could not dismember any part thereof without the kings licence. For he saith in another place in the said booke amongest his writs of partition. *Quod seriantia diuidi non debet, ne cogatur Rex accipere seruitiũ suum per particulas.* Yolwbeit since the making of this statut of Prerogatiue, sundrie opinions haue risen in these matters, as may appeare by the statut made in the yere of king E.3. ca.12. which saith in this maner. *Item pur ceo que plusours gents du Realme soy pleynont deste greues de ceo q̃ terres & tẽts q̃ sont tenus en chiefe du Roy, & aliens sauns son conge ount este pris auant ceux heures en maines le Roy, et tenus come forfeits, le roy ne les teigne my come forfeits en tiel case, mes voet & graunt q̃ desormes de tiels terres & tẽts aliens soit reasonable fine pris en le chãcerie p due proces.* So ỹ by this statut it appeareth they toke the lands to be forfaited, ỹ were holden of the king in chiefe & alienes without his licẽce. And so it appeareth by a booke in T.9.E.3.fo.26. and *Quare impedit.* 54 Pl.14.Ed.3. where *Wilby* saith, ỹ at this day lands holden by graund seriantỹ & alienes without licence bee forfaited. For the seruice of one mans body cannot be chaunged into another mans bodie without the kings assent. Also in the said first yeare of king E.3. the 13. chap, it is prouided in this wise. *Et auxi come plusours gents du people soy pleynont deste greues per purchase de terres & tenements que ont este tenus des aunceſtors le Roy que ore est come des honours, & mesmes tiels tẽts oũt este prises en le maine le roy, auxy si home ils eussent este tenus du roy en chiefe, come de sa corone, le Roy voet q̃ mes ne soit home encheſõ pur nul tiel purchase.* By this statut it appeareth ỹ if a man hold of the king as of any honour which is come to his highnes by discent frõ any of his auncestours, that by reason thereof hee should not hold in *Capite*: For that was contrarie to the law, as it may appeare by the words of the statut, which saith, that the people complained them selues to bee greeued hereby, which

Which is to be vnderstanded vniustly greeued, for by the wordes in the first chapter of *Prærogatiua Regis* it appeareth that if it shalbe said a tenure in *Capite*, it must be holden of the Crowne of a long time. s. *ab antiquo de Corona*. And that is not when it is but newly come: and the Statute of *Magna Charta, cap.*3. did helpe this matter by expresse words If such an honour came to the Crowne by way of Escheate, but not if it came by way of discent or any other way. And that statut doth set forth certeine honours by name, which bee not of the auncientnesse of the Crowne, that is to say, the honour of Wallingforde, Notingham, Bolingbroke, and Lancaster. Therefore hee that holdeth of the king as of these honours, holdeth not of the king in Chiefe. But other honours there bee which of so long time haue beene annexed to the Crowne that to hold of them is to hold in chiefe, as it appeareth in the new *Natura breuium folio* 256. *a.* & *b.* where one held of the king as of a certeine honour, to yeld a certeine rent to the keeping of a Castel of Douer, this was there taken to bee a tenure in chiefe. And so it was where one helde of hys hyghnesse, as of the honour of the Abbey of Marle. Therefore learne what honours bee of the auncientnesse of the Crowne: and what not. And there is another statut made in the 34. yeere of the said king the 15. Chapter, which saith in this wise.

Item accord est & estable, que alienation de les terres & tenemen aits per gents que teignont du Roy Henry besayle au Roy que ore est, ou des auters royes deuaunt luy, a tener de eux mesmes, que les alienations estoient en lour force. Saluant toutes foites a nostre seigniour le roy sa Prærogatiue de temps son ayel, son pier, & son temps demesne. This latter statut doth argue that the king ought to haue Prerogatiue, since the time of kinge Edward the first, & none before. And surely so was the lawe taken, as it appeareth M. 20. E. 3. *Assise* 122. & 124. & 26. li. ass. pl. 140. & therfore to the inter this alienation made in k. h.

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before should not now bee brought in question, this statut was made so that his grace should haue fine for al alienations without licence made since king Edwarde the first tyme, but not for any made before. And thys should bee the meaning of this statut, which (vnder correction) is misstaken by master *Fitzherbert* in his *Natura brevium folio.* 235. Howbeit for myne owne oppinion I doe not see by al these statutes, but that the king hath his Prerogatiue by thorder of the common law, at least wise as the common law hath beene taken since the time of king Edward the first, or else he could not haue it now, for any thing that I see prouided for him by these statutes. For this statut of Prerogatyue goeth but to that where his tenaunt in Chiefe alieneth the greatest parte without licence, *Ergo* he may alien the lesser parte without licence, and so doth the statut expressely set it foorth except you will saye there be two licences vnderstanded here, that is to say a generall lycence by thorder of the common lawe, and a speciall licence by this statute, thone to be requisite where any parcell is sold, thother whē the more parcell is sold. Therfore enquier & learne what other mens opinions are vpon this statut. For I find no booke to proue it comō law before *Britons* time, for *Glanuil* ne *Bracton* speaketh any thing of it. And where this statut of prerogatiue speaketh onely but of knights seruice, the law is otherwise taken. For if one do hold of ỳ kings highnes in Socage in chiefe, he can alien no peece wōut licēce. Thē let vs see what thinges may bee graunted or donne without licence and at what tyme: And how the tenauntes that haue licence shall pursue the same. The kynges tenaunt that holdeth of hym in chiefe maye graunt a rent charge out of the same without lycence as it appeareth 40. lib. Assi. Pl. 5. M. 7. H. 6. folio 2. For the kynge by that shall sustayne no detryment. For hys highnesse nede not to hold it charged except hee will. But if one hold an aduowson of the

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king or a rent, & graunteth ouer the same without licence, the grantee shall pay a fine. And that appeareth Ÿ.21.E.3. fo.31. For there the case was that vpon liuery w̄ a partitiō, an aduowson was allotted only to one of the coparceners & after by composition betwene her & her fellowes she was agreed to leaue thaduowson againe in common amongest them al & to present by tourne, and adiudged ẏ this was an alienation, for the which she must make a fine: For before she was tenant only, and now she is become tenaunt iointly againe with her fellowes. The like law is it, if there bee lord mesne and tenaunt, the king is the Lord and the mesnaltie is holden of him in chiefe, if the mesne release to the tenaunt without licence, he shal pay a fine, as it appeareth 38.li.Ass.Ÿ.17. & yet the release goeth there by way of extinguishment, but what then? he holdes now by the seruice the mesne did, that is to say, in chiefe, and so thereby the tenāncie is altered. The selfe same law is it if two iointenantes be, and thone release to thother without licence, the kinge shal seise for a fine, as it appeareth 40.li.Ass.Ÿ.5. Ÿ.8.Ÿ. 4.fo.8. For the like reason that is made in the case of the coparceners before. But where there is nothing but a bare right released which goeth by way of extinguishment other wise it is. For they of therchequer vpon a fine sur release onely vsed to make out no proces to aunswere the king of an alienation. The kings tenāt in chiefe may make a lease for terme of yeares without licence, but not a lease for tearme of life, nor no higher interest, as appeareth Ÿ. 45.E.3.f.6. and in the new *Natura breuium folio*.175. Then at what time or how he should pursue his licence if ẏ licēce be graūted by one king he cannot by vertue therof alien in the time of another king, as it appeareth *Offic. de court* 29.Ÿ. 2,E.3. Like law if the lāds be in the kings hands for *Primer seisin* or alienation wōut licence, at which time ẏ king doth licēce his tenāt to make a feffemēt, he cānot make this feffe

ment

mẽt till ẏ lands be out of ẏ kings hands, as appeareth H.21. H.7.fo.7 Also he that hath licẽce may not vary frõ it in any point: *Fines* 124.P.18.E.2. As if the king licence the abbot & Couent to,to make a feoffement, & thabbot sole wil make it, this is voide,as appeareth H.21.H.7.f.8. And there *Frowick* said that if ẏ king licence me to make a feffement by deede, I cannot make it without deede *Nec econtrario*, And herewõ agreeth the booke of H.3.E.3.5. Where the licence was to leuie a fine of the maner of Dale to find two chapleins & he would haue leuied the fine leuing out the chapleins, & could not be suffred. And H.30.E.3.17. the licence was to leuie a fine of the manor of Dale yelding a rent, & hee would haue leuied the fyne of the manor with a forprise, that is to say, excepting certein acres parcell of the manor yelding the rẽt & could not be receiued so to doo for that should not agree wõ the licence, which would ẏ whole manor to be charged with the rent. But if there had bene no rent reserued, it seemes he mought haue aliened any part of the manor by a licence of alienatiõ of ẏ whole manor *Tamen quære*. For it should seme to be wõ the words of this statut which would you should not dismẽber the kings fees, & learne if the king licence hys tenant to make a feoffemẽt, whether he may make it vpon condition or not, for they vse when a condicionel feoffement is to be made, to exprẽsse the condicion wõ the licence, & if ẏ condicion be to make an estate againe to the feoffor, all this goeth vnder one fine & in one licence. H.33.H.6,fo.52. And note that if the Justices before whom the fine shalbe leuied be enformed ẏ the lands are holden of the king & so appere to them by any record, they will not take ẏ fine til they haue seene the licence, nor yet engrosse it till they haue receiued a writt out of the Chauncery called *Quod permittat finem illum leuari*, by which they may be fully certified of the kinges pleasure, which writ appeareth in the new *Na.bre.fo.*147.C.

And

and that they haue thus vsed it appeareth 4. E. the second *Fines* 115. But they neuer vsed to do vpon a recouery in these common writes of entre in the post, because the recouerer in such case should pay no fine: for it was no alienatiō since the recouerer claimed not in by the tenaunt. But nowe by the statut made in the 32. yere of king Henry the 8. cap. 1. it is ordeined that the recouerer in such case should pay a fine for alienation, & note that if an alienation be made without lycence the pardō is most commonly made vnto the feoffee and not to the feoffer. And so I suppose it ought to be, because the wrong groweth by the entre of the feoffee which hath entred the kinges fee without hys licence. And therefore the case is 14. H. 6. f. 26. that where the kinges tenaunt alieneth without licence, and take estate againe to hym and to his wife in taile, the remainder ouer to his right heires and dyeth without issue, and the king pardoneth the wife all maner of alienations, this was thought good to exclud the king of his fine that hee should haue had for the said alienation. And it is further to bee noted that the licence must bee purchased vpon a true suggestion or els it is void. For if the kinges tenaunt in tayle pretending to bee tenaunt in fee simple will purchase licence to make a feoffement, this is a voide lycence as it appeareth 29. ass. 30. & 40. lib. Ass. 36. And in all cases where the kinges tenaunt in chiefe will dismember his tenancy, that is to say alien any parcell there of without licence, the king may distrayne for hys whole rent in the parcel so alienedd, but if he haue the kings licēce to make such alienation, the alienee shall haue a writ in the Chauncery called *de deonerando pro rata porcione*, that he shal not further bee charged then after the quantitie of the porcion that hee holdeth. This write you may see in the newe *Natura breuium* fo. 235. a.

The

¶ *Le Roy auera ſon preſentment nient obſtant que Leueſque ad fait collation pur laps.*

DE eccleſiis vacantibus quarum aduocationes ſpectant ad regem, & alii preſentauerint ad eaſdem. Ita quod contētio inter dominum regem et alios oriatur, ſi rex per conſiderationem Curię preſentationem ſuam recuperauerit, licet poſt lapſum ſex menſium á tempore vacationis nullum currit ei tempus dum tamen rex preſentauerit infra tempus ſex menſium.

Of this chapter I finde nothing neither in *Glanuill*, *Bracton* nor *Britton*, ne in any other old writer, beefore the making hereof, ſauing that I find this terte both in *Bracton* and *Britton*. *ſ. quòd nullum tempus occurrit Regi*, which *Bracton* in the beginning of his firſt booke vnder the title, *Que res dari poſſit*, applyeth vnto liberties appertayninge vnto the Crowne, ſaying in this wiſe: *Quòd ille qui huiuſmodi libertatem ſibi vendicat, doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate, defendere non poterit quamuis pro ſe pretendit ſeiſinam longi temporis, diuturnitas enim longi temporis in hoc caſu non minuit iniuriam ſed auget, nec in iſto caſu currit tempus contra Regem, nec incumbit ei probatio quòd ad ipſum pertinet, cùm conſtare debeat ſingulus, quod huiuſmodi de iure gentium pertineant ad Coronam, ſed ſunt aliæ res que pertinent ad Coronam. que non ſunt ita ſacræ, quin transferri poſſunt, ſicut ſunt fundi, terre & tenementa, & huiuſmodi per que Corona Regis roboratur, & in quibus currit tempus contra regem, ſicut contra quamlibet priuatā perſonam.* Thus it appereth by *Bracton*, that this terte doth not ſerue the king in all caſes, for preſcription ſhall holde ſometime againſt the king in ſuch things as a mā may preſcribe in, as it is cōmō in our bookes, that one ſhal preſcribe for waiſe and ſtraife

and such like against the king. And also it appeareth in the booke in *Trauers* 47. *A.* 8. *H.* 5. that ỹ king may surcesse his time: as where it is found that tenant for terme of life hath forfeited his estate to the king, whereby the kinge ought to seyse, if his grace seyse not, but tarry till he be dead so that he in the reuersion entreth, he cannot then seyse, and so it may appeare vnto you, that thoughe this bee an auncient texte, *Quod nullum tempus occurrit regi*, yet in cases it doth: and where the texte is onely appointed by this statute to serue where the bishop taketh the benefit by laps, yet by an equity it is taken in some cases to extend to a plenarty, that is to say, where a straunger hath presented, and his clerk is in by sixe monethes: as take the case to be where ỹ king hath aduowson in ward, and a straunger vsurpes and hys clerk is in by sixe monethes before ỹ king bring his *Quare impedit*, yet shall his plenarty be no plee against his highnes, but ỹ he shall recouer: & the reason of it is, because els the kynge should be without remedy. For writ of right he cannot haue hauing but an estate in the thing as gardein. Wherefore in this case, *nullū occurrit ei tempus*, for els it should appeare that a straunger might hold a thing merely by wrong against him without any good ground or beginning that can be intended of it, which case is agreed *P.* 18. *E.* 3. *fol.* 16. and *P.* 43. *E.* 3. *fo.* 14. But yet in this case ỹ king may not put out ỹ Incũbent which is admitted, instituted, and inducted in the benefice wout suit, that is to saye, *Quare impedit*, because it is so prouided by the statut of 25. *E.* 3. capitulo. 3. & 13. *R.* 2. capitulo 1. Like lawe is it, if the kings tenant be seysed of a maner holden in chefe, to the which aduowson is appendant, and alienth the maner with the aduowson without licẽce, after the church becomes void, and a straunger vsurpes, & so twenty vsurpations one after an other, and afterwards

these

theſe alienations without licēce are found by office and the churche beecommes voide, the king ſhall preſent notwithſtanding thoſe vſurpations, and if the church be full, hys highneſſe maye haue a *Quare impedit* againſte the Incumbent, *Cauſa qua ſupra*. And this appeares in H. 4. E. 3. folio. 2. But if the king bee ſeyſed of an aduowſon in his demeane as of fee, it ſeemes that plenarty ſhal bee a good plee againſt him, for there his highneſſe hath remedy prouided him, that is to ſay, by writ of right, and ſo is the opinion of *Shard & Vilby* P. 18. E. 3. *folio* 15. *Quære*, for in the booke of P. 47. E. 3. *fol.* 14. the defendant durſt not abide by the plee, but trauerſed the title that was made for ỹ king. And learne whether plenarty be a good plee againſt the Queene whith holdeth for terme of life, the reuerſion to the king, for this caſe is alſo left at large in P. 18. E. 3. *fol.* 13. Nowe to the ſtatut where the wordes bee, that no laps ſhall holde againſte the king, if hee preſent within fiue monethes: Theſe words, If hee preſent within fiue monethes, bee voide, for though hee preſent not, yet title of laps ſhall not take place againſt him by this ſtatute, and therefore the booke is P. 18. E. 3. *fol.* 11. that where the laps was incurred in the life of the kynges tenaunt, and beefore the Ordinary preſented, the tenaunt died, and it was adiudged that the king ſhould haue the preſentment, and not the Ordinary. But praduenture you will ſay, in that caſe the king could not preſent within the fiue monethes, becauſe his tenant was yet aliue. What ſay you then to this caſe? if the laps did incurre after the death of the kinges tenaunt, and beefore office found, the kynge notwithſtandinge ſhall haue the preſentment after office found, as it is agreed P. 14. H. 7. 22. and yet there the kyng might haue preſented after the death of hys tenaunt beefore office founde, and did not. And in the ſaid booke of P. 14.

H.7.folio.21.it is left a question, seeing the ordinary cannot present by laps against the kinge, howe and in what manner the cure shalbe serued in the meane tyme, that is to saye, betweene the laps and the kinges presentment, some thincke in that case that the ordinarie shoulde present one for the meane tyme which should be remouable alwaies at the kinges pleasure, and some other think he shoulde sequester the fruites to fynde the cure, *Ideo quare.* And *Bracton libro tertio* in the wrytte of *Darrein presentment* sayth, that this title of presentment by laps was geeuen to the Ordinary by a constitution made in the Councel of *Lateranense.*

¶ *Le roy auera le gard de terres de Ideots.*

Cap.9.

REx habebit custodiam terrarum fatuorum naturalium capiendo exitus eorundem sine vasto & destructione, & inueniet eis necessaria sua de cuiuscunque feodo terre illæ fuerint, & post mortem eorum reddat eam rectis heredibus, ita quòd nullatenus per eosdem fatuos alienentur, nec quod eorum heredes exheredentur.

This prerogatiue began in the tyme of Kinge Edward the first, as it should seeme to mee, because I finde none that wrote of it beefore *Britton*, for *Bracton* speakes but a little of Ideottes, and that in his fift the booke in the title of Exceptions against the pleintife, where hee saythe: It is a good exception to the personne of hym that complaynethe or bringeth any accion, to saye, hee is a foole naturall, *Quia tales non multum distant á brutis, qui ratione carent, nec valere debet, quod cum talibus agitur, sed tamen discussio huiusmodi exceptionis discretioni Iudicis relinquitur*, And saith

saith, like law is it of him ỹ could neuer heare, nor speake from the time of his natiuity, *Et quod inuenienda sunt eis necessaria, quod vixerint per officium Iudicis pro qualitate persone, & hereditatis quantitate, si heres esse debeat, & si semel auctoritate curatoris acquisierit, si fuerit inde eiectus, recuperabit per assisam, sicut minor.*

By this it appeares, that the king had no prerogatiue but the Iudge. Howe be it, *Britton fol.* 167. saieth, that the kinge ought to haue his prerogatiue herein, for these be his words *Et pur ceo que aſcun foits auient, que aſcun heire eſt forte naſt, par quoy il neſt myable a heritage demaunder & garder, volumus que tiels heirs de qui que ils vnques teignount males & females demurrogent en noſtre garde oueſque toutes lour heritages, ſauaunt a cheſcun ſeigniour touts auters ſeruices que a luy appende de terre tenus de luy, & icy remaynount en noſtre garde taunt, come ils duraunt en lour fotye, & ceo ne voilomus nous my de ceux que deueignount fotes per aſcun maladye.* Vppon these woords of *Britton* I note three thinges, one is, that the kynge shall not haue the custody during their liues, but during their Ideocy, the seconde, notwithstandinge the lande is in the Kynges handes, yet the other Lorde shall haue theire seignouryes, which is by way of petition, as I take it: and the thirde is that the other Lord shall not haue the wardship of the heire nor of his landes, but onely the king: which three thinges by this Statut of Prerogatiue are not so plainely set forth as also by this Statute it appeares, that the kinge shall haue the custodie of suche Ideotes duringe their lyues, for the woordes bee: *Et post mortem eorum reddat eam rectis heredibus*, and not beefore. The manner howe the king shall come to thys Prerogatiue, appeares by a booke case *Liuery.* 30. T. 16. Edwardi 3. Where *Sharde* saies, that when the Kynge is informed that there is such

an Ideot, his highneſſe ſhall ſend for hym, and cauſe him to be brought before his Chauncellour, or ſome other whom hee ſhall appoint, and if by examination hee bee found an Ideot, yet hys highneſſe ought not to ſeyſe his landes, vntill ſuch tyme as he be found an Ideot by office. And in the newe *Natura bre.* folio. 232. *b.* it appeares, that the kinge appointes all this matter to the Eſchetour or Sherife, bothe to examine and enquire, in which ſaid *Natura breuium* fol. 202. *e.* it appeares, that this office, when it is founde ſhall haue relation *à natiuitate*, to auoide al meanes acts donne by the Ideot, that is to ſay, his feoffement or releaſe: but learne and enquyer whether ſuch feoffees ſhall bee putt out by office without any *ſcire facias* to bee awarded agaynſte them. In *Scire facias* 10. H. 18. Ed. 3. et 116. H. 32. E. 3. & 50. li. Aſſ. H. 2. a *Scire facias* was awarded in that caſe, and learne alſo whether the office ſhall haue relation for the profyts from the tyme of hys natyuitye, or onely from the finding of the office. Then to the expoſition, the woordes bee: *Rex habebit cuſtodiam terrarum fatuorum naturalium.* By theſe woordes it appeare the, that hee muſt bee a foole naturall, that is to ſaye, a foole *à natiuitate*: for if hee were once wiſe, and became a foole by chaunce or miſfortune, the kynge ſhall haue the cuſtody of hym, and ſo it is agreed in H. 18. E. 3. *Scire facias*. 10. And alſo in the newe *Natura breuium* folio. 233. and the maner of the triall of hym to be a foole naturall appeares in the ſaid *Natura breuium* folio. 233. That is to ſaye, if he cannot tell to twenty pence, or tell his age, or who was his father and mother, or ſuch lyke thinges whereby it may appeare, hee hath no kind of vnderſtandinge in that that is eyther for hys profite or dammage. But if hee bee learned, and apt to learne, then is he no Ideot, as Maiſter *Fizherbert* there thynkes. And *Grene* ſayth in *Sauer de*

defaulte

Default 37.H.31.Ed.3. That if hee be able to beegette eyther sonne or daughter, he is no foole naturall. The woordes of the statut bee further: *Capiendo omnes exitus eorundem sine vasto & destructione, & inueniet eis necessaria sua.*

By these woordes it appeareth, that the king may take the profits to his owne vse, finding them their necessaries. And therfore in the booke before of 31. E.3. the kinge did lett the land vnto one of the cosins of the Ideot, yeelding a rēt. But these woordes, *Inueniet eis necessaria*, are not onely meant to Ideots them selues, but also to all them that hange vppon them, as there wife, childzen, and family. And also by these woordes, *Sine vasto & destructione*, it appeareth, the king is bound to reperations of their lands and tenementes. The woordes be also, *De cuiuscunque feodo terre ille fuerint.* By those woords *Gard.*5.H.3.E.2. it should seme ỹ kig should be preferred in this title of Ideocy, before any other lord which might claime the Ideot as his ward, howe be it learne what other men thinck therein, *Et post mortē eorū reddat eam rectis heredibus.* By which woordes it should appeare, that the kinge should haue the custody during the lyfe of the Ideot, and that then an *Ouster le maine* in nature of a Lyuerye shalbe sued of the same out of the kynges handes: but whether it shall bee made with the issues and profits from the tyme of the Ideots deathe, or onely but from the time of the tender of the *Ouster le maine* learne, but if the landes that the king had so in custody bee holden of him in Capite, then notwithstanding these woordes of the statute, yet the kynge shall haue warde, primer seysin, and all other prerogatiues, as if hys tenaunt in chiefe had dyed seyseo therof beeing no Ideot, as it may appeare in the newe *Natura breuiū* fo.256.d. And there it appeares folio.252. H. also, that although the Ideot held no landes of the kinge, yet a

Diem clausit extremum, shalbee awarded after his death, to enquier what landes hee died seised of, of whom they are holden &c. And it is to be noted, that if one be found Ideot by office, and beefore the kinge seased the landes, ỳ Ideot dyes, yet the king shall sease, because of these woordes in the statute, *scilicet*, *post mortem eorum reddat eam rectis heredibus*, which his grace cannot doo but vpon a seisure, and this appeares 9.18.E.3. *Scire facias* 10. And note also that if there descende to an Ideot no possession in lands, but onely right, bee it right of entre, or title of entre, or right of action, the king shall not enter and haue the custody of the same, as appeares in 9.1.H.7.fol.24. & 9.2.H.7.fol.3. and yet if hys tenant of landes holden of him by knights seruice, be disseised, and dieth, his heire within age, the kyng shall enter and hold the same in ward: and therefore learne what is the reason that should make a difference in these actes. The woordes be further, *Ita quod nullatenus per eosdem fatuos alienentur, nec quod eorum heredes exheredentur.* By these woords it appeareth, the lands cannot be aliened by the Ideot, nor the heires disherited, and therfore if the Ideot make a feoffement, or release of hys landes, and that found by office, the kinge shall auoide it, as I haue beefore noted, and so likewise his heires after his death by force of these woords of the statut. And yet it appeares *Sauer defaut* 37.9.31.E.3. that a recouery by default passed against an Ideot, but execution of the iudgement was stayed, because of the kinges possession: Which proues, that notwithstanding the kynge haue the possession during the Ideots life, yet his highnes hathe no freehold therby, but onely a bare custody, for the freeholde remaines in the heire. And therwith agrees H.17.E.3. fol.11. But what then? this recouerie is not like to this alienation, for by the recouery the Ideots heire is not disherited

rited by the acte of his auncestor, if so bee that the recouery were vppon a good title. And it appeares in P. 33. H. 6. folio 18. That an Ideot shall not bee receiued to pleade by gardein, or *Prochein amy*, but hee hym selfe shall appere in proper person in euery action brought against him, and who soeuer will pleade best for him, shalbe admitted: and learne and enquier if the Ideot bee but tenaunt for terme of life or yeres, if the king shall haue hys prerogatiue therein or not, beecause the Ideot cannot alien that lande to the disherison of hys heire: and if hee shall, howe the lessor shall punishe the waste done in the kings tyme. And learne also, whether the kinge shall haue the goods of an Ideot, as well as the land. Then laste of all if one be found Ideot which is none in deede, the maner how he shal auoide this office, appeares in the new *Natura bre.* fol. 233. *a.* That is to say, he that is falsely foũd to be an Ideot, either by him selfe or his friends, shal cõe into the Chaũcery or before ỹ Chaũcelour of England and the kinges counsell, and praye to bee examined of his Ideocye, or hee may sue a writ out of the Chauncery to him that hath the keeping of hym, to bringe hym beefore the king and hys counsell to bee examined, and if he bee found vppon his examination to bee no Ideot, then by that is the office and all the rest of the prõtes auoyded without any further trauerse. Howe bee it where a *scire facias* is awarded againste the feoffee of the Ideot, there the feoffee appearinge vppon the *Scire facias* may trauerse the Ideocy, as it appeares he did in the booke beefore *Scire facias*. 10. H. 18. E. 3. And note, that by a statute made in the 32. of Henry the eight, the 46. chapiter, Ideottes and their lande bee in the suruey of the courte of wardes, and the same court may lette and sett their lands,

but

but not to graunt the cuſtody of their bodyes for any words that I can perceiue in the ſame ſtatute.

¶ *Le Roy purueiera pur luy que neſt de ſane memory.* Cap.10.

ITem Rex prouidebit quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis ſue, ſicut quidam ſunt per lucida interualla, quòd terre & tenementa eiuſdem ſaluo cuſtodiantur ſine vaſto & diſtructione, & quod ipſe & familia ſua de exitibus eorundem viuant & ſuſtineantur competenter, & reſiduum vltra ſuſtentationem eorundem rationabiliter cuſtodiatur ad opus ipſorum, ita quòd predicta terre & tenementa infra predictum tempus nullatenus alienentur, nec Rex aliquid de exitibus recipiat ad opus ſuum. Et ſi obierit in tali ſtatu, tunc illud reſiduum diſtribuatur pro anima eiuſdem per conſilium Ordinarii.

It appeares by *Bracton* in his fifthe booke amongeſt the exceptions to the perſon of the plaintife, that it is a good exception, to ſay, that he that is demaundant or plaintife, is of *Non ſane memory.* For theſe be his woords *Competit etiam tenenti exceptio peremptoria ex perſona petentis, ſi petens furioſus fuerit vel non ſane mentis, quod diſcernere neſciat, vel quod omnino nullã habeant diſcretionem: tales non multùm diſtant à brutis, q̃ ratione carent, nec valet quòd cum tálibus agitur durante furore. Poſſunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habẽt furorem perpetuum quod autem actum fuerit cum talibus tẽpore quo dilucidis gaudent interuallis ratũ erit, ac ſi cum aliis ageretur, ſiue furorem ſuum ſimulauerint, ſiue non, acquirere quidẽ non poterunt in ipſo furore, vel cum non fuerint ſane mentis, aliqui quicõſẽtire nõ poſſunt, nec acquiſita alienare vel dare, quia alienationi*

non

non magis consentire possunt quàm acquisitioni, sed seisinam retinent, quia animum mutare non possunt, quem acquirendo cùm essent sanæ mentis habuerunt, & furor superueniens nihil adimit non maius quám morbus incurabilis, sicut lepra: secundum quod dicitur, quòd multa impediunt contrahendo, quæ non diriment contractum, & ita sunt multa quæ impedeunt promotionem quæ non decidunt iam promotum. Et talibus de necessitate dandus est tutor vel curator.

So it appeareth by *Bracton*, that in his time it was thought expedient, that folke that were destraught should haue a tutour, or one that should take the charge of them, which office since is reuolued vnto the kinge, and made parcell of his Prerogatiue. For as *Fitzherbert* in his *Natura breuium folio.* 232. very well saith. The king is the protector of all his subiects, and of all their goods, landes, and tenementes, and therefore of such as cannot gouerne themselues, nor order their landes and tenementes, hys grace (as a father) must take vppon hym to prouide for them, that they themselues and their things may bee preserued. And because that lunacie or madnes is not from the tyme of ones birth, (as Ideocie is) but commeth sometimes by fits or courses, his grace therefore can claime no certayne interest in the lunatike person, like as he may doe in the Ideot: *Gard.* 5. M. 3. E. 3. And therefore it is ordeyned, that his grace shall prouide for such in the time of their said Lunacie or maladies, that they or their familie may bee sustained, and their thinges preserued accordingly, as it is set forth in this Statut. And learne whether the kinges interest is such, that after the death of the lunatike, or the recouery of his wittes againe, there must be an *Ouster le mayne* sued, as it is sued in the case of the Ideot, or els that ỹ kings interest is auoided *maintenaunt* by the death, or recouery againe of the lunatike person.

¶ Le Roy

¶ *Le Roy auera wrecke, ballenas, & sturgiones.* Cap. 11.

ITem Rex habebit wreck cum maris per totum regnum, Ballenas & Sturgiones captas in mari vel alibi infra regnum, exceptis quibusdam priuilegiatis locis per regem.

This Prerogatiue the king euermore had by the order of the common law, as may appeare by *Bracton* in his second booke vnder the title *Que res dari possit*, where he saith in this wise, *Sunt etiam alie res que pertinent ad coronam propter priuilegium regis, & ita communem non recipiant libertatem, quin dari possunt, & ad aliud transferri, quia translatio nulli erit damnosa nisi ipsi Regi siue Principi. Et si huiusmodi res alicui concesse fuerint, sicut wrekum maris, Thesaurus inuentus, crassus piscis, sicut Ballena & Sturgio, & alij pisces regales, oportet, si questio inde habeatur, quòd ille qui huiusmodi libertatem sibi vendicat, doceat huiusmodi ad se pertinere, quia si warrantium non habuerit speciale in hac libertate defendere non poterit, quamuis pro se pretendat seisinam longi temporis, diuturnitas enim temporis in hoc casu non minuit iniuriam, sed auget, nec in primo, nec in secundo casu currit tempus contra Regem, nec ad ipsum incumbit probatio quòd ad ipsum pertineat, cùm constare debeat singulis, quòd huiusmodi de iure gentium pertineant ad coronam.*

And also in an other place of the said booke, vnder the title, *De libertatibus quis eas concedere possit*, he sayth: *Habebit Rex præ cæteris omnibus in regno suo priuilegia de iure gentium propria que de iure naturali esse debent inuentoris, sicut Thesaurus, wrekum, Crassus piscis, Sturgio, Waiuæ, que in nullius bonis esse dicuntur, & dicuntur priuelegia, que quamuis ad Co-*

ronam

ronam pertineant, á corona seperari possunt, & ad priuatas personas transferri, sed de gratia ipsius regis speciali, cuius gratia & cõcessio specialis, simon interuenerit tempus à tali petitione Regem non excludat, & in hoc casu comprobatione non egeat, quia nullum tempus currit contra eum,

And in this agrees *Britton fo.26. & fo.85.* so that by these writers it should appeare, that at thys tyme no man myght prescribe in *wreke de le mere.* And that the lawe was then so taken, it may appeare by these wordes within the statute *scilicet, exceptis quibusdam priuilegiatis locis per Regẽ,* which argues, that that must be by the kinges graunt, for no place cã otherwise be priuileged by the king. Howbeit *Hull & Thirn* in H.11.H.4.fo.16. thinke, that a man may prescribe in *wreke de la mere, tamen quære,* for this statut and *Britton* and *Bracton* are since the time of limitation, ỹ is to say, king R. the first. The wordes of the statut be farther, *Ballenas & Sturgiones. Bracton* in his second booke vnder the title of *wreke de la mere* saies, *Quòd de Sturgione ita obseruatur, quod rex habebit illum integrum propter suum priuilegium, de Ballena vero sufficit secundum quosdam, si Rex inde habuerit caput, & Regina caudam.*

So in *Bractons* time it was doubted by the common law. whether the king should haue this great fishe called *Thirpole* wholy or not. And so likewise in *Brittons* time, as it may appeare in his booke fo. 27. which now this statute hath made clere, & without question.

¶ *Le Roy auera leschetes des terres des Normans & aliens, de qui que ils teign, sauant les seignories as seigniours. Cap.12.*

ITem habebit eschaet de terris Normanorum, cuiuscunque feodi fuerint, saluo seruitio quod pertinet ad capitales Dominos

minos feodi illius, & hoc similiter intelligendum est, si aliqua hereditas descendat alicui nato in partibus transmarinis, & cum antecessores fuerunt ad fidem regis Franciæ de tempore regis Iohannis, & non ad fidem regis Anglia, sicut contingit de baronia Monumetæ post mortem Iohannis de Monumeta, cuius heredes fuerunt de Brittañ., & alibi de feodis aliorum recuperauerit Henricus plures eschaetas de terris Normannorum occasione prædicta, & eas contulit tenendas de capitalibus dominis feodi per seruitia inde debita & consueta.

It appeareth by the Chronicles, that king John was the last duke of Normandy, & that in his time Normandy was lost, whereuppon king Henry his sonne, as it may appeare by the latter clause of this chapter, recouered diuers eschetz of lande within this Realme holden by Normans, whych after they began to adhere to the French kinge, the kings enemy, and became traytors vnto his highnesse, they forfeited all their landes by order of the common lawe to the king, of whom so euer they were holden. Howbeit in such cases, after the forfeiture, if the king had geuen these lands to any other, he might not haue geuen them to hold of him selfe, but onely of them of whom they were before holde, as this statut plainely declareth, that king H. the third so did. And likewise in *M.20.E.3.Ass.24.H.46.E.3.Petitio* 19. it appeareth, that if the kinge do otherwise, his patentes shalbee expelled, & made to holde of the lordes of whom the landes were holden before the treason, & that by a petition of Right to be sued vnto the king for the redresse of ỳ same, for other remedy haue they none, and distraine they may not, as appeareth in the newe *Natura breuium. fol.*159. *A.* And further it should appeare by ỳ said booke of 20. Ed. 3. that the kynge ought not to reteine such lād in his owne hāds no while, but must dispose them ouer to hold of thē that were lords therof at the

at the time of the treaſon committed. Hereby may you gather, that this ſtatut in his firſt braunch is but a confirmation of the common law, and that long time before the making hereof king Henry the third had this Preroga-tiue, as it doth manifeſtly appeare in the latter braunche thereof. And alſo by *Bracton* in his firſt booke in the title *De cuſtodijs & maritagijs dominorum*, and likewiſe in *Eritton folio.* 28. The wordes of the Statut be further: *Hoc ſimiliter intelligendum eſt, ſi aliqua hereditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad fidem Regis Franciæ, de tempore Iohannis Angliæ, ſicut de baronia Monumetæ poſt mortem Iohannis de Monumeta, cuius heredes fuerunt de Eritannia vel alibi.* By this braunch it ſhould appeare, that at this time men of Normandie, Gaſcoyne, Guyon, Angeo, and Britayne, were inheritable within this Realme, as well as Engliſh men, becauſe that they were ſometime ſubiect vnto the Kinge of England, and vnder their dominion vntill king Johns time, as is aforeſaid, and yet after his time thoſe men (ſauing ſuch whoſe landes were taken away for Treaſon) were ſtill inheritable within this Realme, til the making of this ſtatut. And in the time of peace betweene the two kinges of England and Fraunce they were aunſwerable within this realme, if they had brought any action for their landes and tenementes, as it doth playnely appeare by *Bracton* in his fifth booke, in the title *De exceptione quia alienigena*, for there bee his woordes: *Eſt autem alia exceptio que competit tenenti experſonis petentis propter defectum nationis que dilatoria eſt, & non perimit actionem Vt ſi quis alienigena qui fuerit ad fidem Regis Franciæ, & actionem inſtituit verſus aliquem qui fuerit ad fidem Regis Angliæ, talis non reſpondeatur ſaltem, donec terre ſint communes, nec etiam ſi Rex ei con-*

concesserit specialiter placitari, quia sicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita non debet alienigena & Francigena, qui fuerit ad fidem regis Franciæ audiri placitando in Anglia.

Note here, that he saith, that this exception is but dilatorie, and not peremptorie, which proueth that hee shal haue his action at an other time, that is to say, in the time of peace. And also hee saith after, *Donec terre sint communes*, which is as much to say, vntill such time as there is peace betwene Fraunce and England. Also *Bracton* in his thirde booke vnder the title, *Quòd mulier ostendat warrantum per quem petit dotem*, saith. *Si warrantus fuerit ad fidem Regis Franciæ, & excipiatur de warranto, remanebit dotis exactio in suspenso imperpetuum, vel ad tempus saltem donec terre fuerint communes.* This warrant of dower is the heire of the husband, for by the auncient law by *Glanuill Li. 6. cap. 16.* If a woman had brought her writ of Dower against any other, but the heire, he was not bound to aunswere her dower, vntil such time as shee had brought forth her warrant, that is to say, the heire. In like case after shee is endowed, shee is not bound to aunswere to any other without the heire, and if it might appeare that the heire had no right in the two parts, then should she be barred of her action of dower, as it appeareth in the case before, ỹ his right is suspended whē hee is a Frenchman, and the two Realmes at warre. Howbeit it appeareth, as I haue sayd before, that this exception is not peremptorie, but that after the two Realmes bee againe at peace, shee shall haue her dower, *Dower* 179. 9.4. 9.3. The wordes of this branch bee also in the Copulatiue, that is to say, that the auncester must be of the allegeance of the French king, and that the heire of the said auncester is borne in the part beyond sea. I put case then ỹ the auncester were of the allegeance both of the one king and

and the other that is to say the French kinge, and the kinge of England, whither is this within the compas of this statute: For *Bracton* in his said .b. booke vnder the title *De exceptione quia alienigena* sayth. *Quod sunt aliqui qui sunt ad fidem vtriusque sicut fuit W. Comes Mareſcallus & manens in Anglia, & Michael de Seins manens in Francia, & alii plures, et ita tamen quod ſi contingat guerra moueri inter Reges, remaneat perſonaliter quilibet eorum cum eo cui fecerat legeantiam,* Whereby it should appeare that of such as were in allegeaunce to both kings, the king should haue no eschetes of their lands. For the wordes of the statut bee not onlie, *ad fidem regis Francie* but also, *et non ad fidem regis Ang. ideo quære.* And who shalbee inheritable at this day that bee borne in the parties beyond the sea, and who not. See the statute thereof made in the .25. yere of king Edward the third., *de natis in partibus tranſmarinis.*

Si lheire le tenant le roy en chiefe entre auaunt liuere, nul frãktenement luy accrue et la feme perdra ſa Dower. Cap. xiiii.

QVando aliquis qui de rege tenet in Capite in fata decedat & heres eius ingrediatur tenementum quod anteceſſor ſuus tenuit de rege die quo obiit, antequam fecerit homagium regi, & ſeiſinam ſuam ceperit per regem, tunc nullum accreſcit ei liberum tenementum. Et ſi obierit ſeiſitus per idem tempus, vxor eius non habebit dotem de tenemento illo, ſicut contingit de Matilda filia comitis Hereford vxoris manuſell mareſcalli, que poſt mortem VVilhelmi mareſcalli Anglie fratris ſui, cepit ſeiſinam caſtri & manerii de Scrogoill, et obiit in eodem caſtro antequam intraſſet per regem, et feciſſet ei homagium, &

vnde conordatum fuit quod vxor non haberet dotem, eo quod vir suus, non intrauit per Regem, imo per intrusionem, sed hoc non intelligatur de socagio et parvis tenuris.

This statute is but an affirmation of the common lawe as it may appeare by the case comprised in the same which was ruled before the making of this statut and iudged according to the effect hereof. And this statute seemeth to put a paine vppon the heires that will entrude before they haue sued their liuery, and taketh away from them the freehold that ȳ lawe had else vested in them: And yet it is not taken so generally as the woordes bee, but spectally and onely of intrusions after office found, and not before: And therefore if the heire enter after the death of his auncestour and before office found, and the king pardoneth him all entries wyth the profits, this is good and amounteth to a special liuerie, so that the heire needeth to sue no mo liueries, and yet if thentrusion were after office, and then the king would pardon him it were voide, because that at the time of the pardon hee had no free hold, whereupon the pardon might enure ℣.3. ℣.7. folio 3. Like lawe is if the heire before office enter and make a feoffement and the kinge pardoneth the feoffee, it is good, and yet such a feoffement after office with a pardon were voyd for the reason I haue made before. Like lawe is if the entrie bee before offyce and the pardon after office this is voyd, beecause that by office the king taketh the possession from the heire or feoffee, and then is there no possession whereuppon the pardon may enure: And so voyd. For the office when it is found hath relation: from the death of the kinges tenaunt, if it be so that the kinge do not release hys ryght before the offyce founde, and that appeareth ℣. 16. Edwarde the fowerth folio 1. where it is also sayd that the pardon must bee aswell of profites as of the entrie, or else after office found

the

the kinge shalbee aunswered of the profites, and M.13.H.4. folio 3. there is a difference put betweene the pardone that is made to the heire, and the pardone that is made to the feoffee: For in the case of the feoffee the pardon must be speciall, rehearsing all the matters. Then lett vs see further for the endowement, if after the death of the kynges tenaunt the heire doth not enter but dye before office founde, hys wife shalbee endowed beecause of a possession in lawe that was in hym. P.1. Henrie 7.17. M. 38. Edwarde the third.30. Like lawe is it if hee dye after office found and before any entrye, H.4. Henrie 7. fol.1. Like lawe is it if hee enter before office and dye.

But if the kinge bee once seysed by office and the heyre dye before liuery and the next heire will enter before a *Deuenerum* sued, and dyeth, his wife shall not be endowed, for in that case it is an intrusion after office. For when the kinge is once seysed by office thys seysine remaynes till liuerie or *Ouster le maine* bee sued. And this case is P. 1. H. 7.19. The woordes of the Statute bee further *Sed hoc non intelligatur de socagio & paruis tenuris*. These woordes are to bee intended of common Socage, for if hee holde of the kyng in Socage in chiefe and will intrude after office, *nullum accrescit ei liberum tenementum*, no more then if the lands were holden by knights seruice in chiefe.

And it is a generall ground that in all cases where hee that sueth hys generall liuerie or *Ouster le mayne* misshueth the same, and entreth thereby, this entrye is an intrusion vppon the kinges possession, and his wife of that possession shall not be endowed as appeareth H.21. Edward 3. fol. 24. E. 3.65.

Le roy auera leschetes que aueigne quant temporalties deuesque sont in ses mains. Cap. xiij.

ITem Rex habebit escaetas de terris liberetenentium Archiepiscoporum & Episcoporum quando ipsi tenentes dãnati sunt pro felonia facta tempore vacationis, dum temporalia eorũdem fuerunt in manu domini regis, conferend. cui voluerit imperpetuum, saluo seruicio quod ad dictos prelatos inde pertinet & fieri consuevit.

Of this statute I finde no booke case. Yolwbeit the letter of it is very plaine and needes no manner of exposition, For it goeth not to any other eschetes then such as growe vppon offences, And if the crime or offence were done while the land was in the kinges handes, notwithstandinge the party were not attainted therof vntill such time as the lãds be out of the kings handes, yet the kynge shall haue the eschete by force of this statute. And here it appeareth howe the kynge shal not hold the lands forfatted stil in his hands, but must geeue them ouer to holde of them that they were holden of before.

Per graunt de roy fees, aiowsons, et dowments des femes, ne passa, si ne soit especialment nosmes. Cap. xv.

QVando dominus Rex dat vel concedit alicui manerium vel terram cum pertiñ, nisi faciat in charta sua vel scripta expressam mencionem de feodis mill' aduocationibus ecclesiarum, & dotibus cum accidunt ad predictum manerium vel terram pertineñ, tunc his diebus rex reseruat sibi eadem feoda, aduocationes cum dotibus, licet inter alias personas non fuerint obseruata.

It is agreed in T. 43. E. 3. fo. 22. ỹ by the order of the comon lawe before this statut, if the king had ben seised of a maner to the which aduowson had ben appendant, & had geuen it to me, notwithstanding ỹ in the kings graunt there had bene no mencion made of the aduowson nor of these words *cum pertin̄*, yet thaduowson had passed frō his highnes by the said grant: for in those dayes ỹ king was but a cōmon persō & a writ of *Enter sur disseisin*, & al other actiōs did lye against him as against any other cōmō persō, & therefore in *Ass.* 431. A. 20. H. 3. A writt of entre was brought against one supposing ỹ they had no entre but by disseisin, which ỹ king did to ỹ demaundant when he was within age, & also *Wilby* H. 24. E. 3. 54 reporteth ỹ he hath sene a writ which was *Precipe H. Regi Anglia* in place whereof is now geuē petitiō by his prerogatiue. And so it is said li. H. 22. E. 3. 3. that in the tyme of king H. 3. & before, the king should be ympleded as any other comō persō, but king E. his sonne ordained that nōe should sue him but be driuen to their petition. Howbeit (sauing reformation of these bookes) I thinke the lawe was neuer so ỹ a man should haue any such accion against the king: For *Bracton* which wrote in king H. 3. time or nere therupō, saith in his 3. booke vnder ỹ title *Contra quem cōpetit assisa* in thys wise: *Inter cetera videndum est quis sit ille qui deiecit. Princeps ex potentia, vel aliquis nomine suo, vel iudex qui male iudicauerit, an priuata psona, si princeps, vel rex, vel alius qui superiorem non habuerit nisi deum, contra ipsum non habebitur remedium p assisam, imo tantum erit locus supplicationi, vt factum suum corrigat & emendet, quod si non fecerit, sufficiat ei pro pena quod deum expectet vltorem, qui dicit, mihi vindictā, et ego extribuā, nisi sit qui dicat qd vniuersitas regni & Barronagiū suū facere possit & debeat in curia ipsius regis, sed si ali' ex facto et disseisina principis statim vel ex post facto in seisinā insteterit, quāuis talis incidat in assisā et in penā vel tantū ad restitutionem, secundū qd seisina ad ipsum peruenerit*

nerit statim vel ex post facto sine principe tamen conuenire non poterit per assisam, quia licet quodamodo disseisinam fecerit, tamen non per se sed cum alio.s. cum principe, & ita quod sine eo respondere nō potuit, & ita non procedit assisa, Indirecte tamen & quasi ex incidente & sine breui comprehendi poterit persona principis ad hoc quod factum suum emendet, vel in personam suā redundabit iniuria manifeste, vt ecce. Esto quod impetretur assisa tantū super eum ad quē res translata est sine principe, et qui tenetur ad restitutionem et ad penam, vel ad minus ad restitutionem et ipse respondeat quod sine principe qui fecit iniuriam per se vel per suos respondere non debeat, quia ipse princeps per se fecit iniuriā vel ipsi duo insimul, extunc erit factum & iniuria in manu domini regis, qui dici debet in facto quasi warrantus, et quod tunc poterit si warrantus voluerit factum suum emendare quasi a lege compulsus, & quam in persona sua cum sit ei submissus debet firmiter obseruare. So that by *Bracton* it appeareth that no acciō lyeth againſt the king but the party greued is driuen to ſue to the king by petition: But the reaſon why that aduowſons ſhould paſſe in the kinges caſe by ẏ order of the common lawe, though it were not expreſſed in the graūt was this I ſuppoſe, becauſe that lands or tenementes were not then compted as things that touched the royal eſtate, or that made ẏ kings crowne like as liberties or frāchiſes did, For the one a common perſon might haue aſwel as ẏ king, but ẏ other nōe might haue but ẏ king, or ſuch as were able to ſhew his grant therof & therefore ſaith *Bracton* in his firſt booke vnder ẏ title *que res dari possit* that for lāds *currit tēpus contra regem sicut contra quamlibet priuatam personam*. Which is as much to ſaye, that if the kynge had right to any ſuch landes or tenementes and had ſurceſſed hys tyme ſo longe, that it exceeded the tyme of limitation in a writte of right, his highneſſe had loſt then hys ryght for euer.

And herewith agreeth *Britton* fol. 29. But that is (ſaith *Britton*) of landes, parcell of the kynges eſchetes or purchaſed

lande

landes, and not of the auncient demeanes of his crowne, for of those *nullum currit ei tempus*, if hee haue any ryght to demaund them. So that by *Britton* this reason wyll not serue for landes parcell of the Crowne. *Ideo quære veram rationem*, Howbeit since this statut made, what lãds soeuer they be, those thinges that are comprised in this statut passe not wout making expresse mention therof. Hetherto we haue spoken of the reason why at the cõmon lawe aduowsons should passe by graunt of the manour without being named, nowe let vs see how since the making of this statute it shall likewise passe by graũt of the manour without being expressely named & how not. H.5. E.3. fo.66. And if the king render vp to him that was in ward at ful age his landes, or to a bishop his temporalties, although he make no mencion of knights fees or aduowsõs, yet all passe therwith, for like as the kings seisin in such case is by these woordes *omnia terras, & tenementa*, without speaking of fees or aduowsons, euen so beinge sued out of his hãds by these woordes, *omnia terras & tenementa*, fees & aduowsons do passe without making any mencion therof. And *Liuerie* 30. T.16. E.3. where after the death of an Ideot, the king rendred againe the landes to the heire not making menciõ of fees or aduowsõs, & yet hee had thẽ. And likewise H.41. E.3. fo.5. T.44. E.3. fol.25. the kynge graũted the temporalties to one that was electe Bishoppe beefore he wasconsecrated & adiudged the fees and aduowsons passed without making any mencion thereof, and yet at the time of the graunt he was not bishop, for he lacked consecration. And the reason in all these cases is, for that the kynge was but seised in another bodies right, and by his liuery he geueth nothing vnto them but onely restoreth them to their right they had beefore. Like lawe should it appeare to bee by *Fincheden* H.29. E.3.7. If aduowson of a church bee appendãt to a Priory, which priory is seised into the kinges hands by reason y an alien is patrõ of it, & afterward y king dimiseth

the said Priory *cum pertinen.* not making mencō of the aduowson vnto the said Priour, yelding a rent, to haue and to hold the same during the warre. And his reason is this, for that the right & free holde in this case remaineth still in the Priour notwithstanding any such seisin, & the kinge is but to haue an annuel profit thereof, and no right, but if any bee to sue dower or liuery with a particion out of the kinges hāds they by that cannot haue thaduowsō if mencion be not therof made, no more then they can that clayme by Graunt, and yet the king rendreth them the thinge in respect of a right beefore, as he doth in the other cases. But what then? they claime not the whole lande that is in the kinges handes but onely parcell thereof, and then thaduowson euer more abydeth with that that remaines, if expresse mencō be not made therof, and so not like the cases before where the king maketh liuery of the whole. And this case appeareth also in ỹ said booke of H.5.E.3.fo.67. And note ỹ in all cases where the king seiseth a thing as his owne proper right as he doth in ỹ case of wards, eschete, & such like, there nothing passeth by graunt of the appurtenaūce if expresse mencion be made of ỹ thing ỹ is appurtenant by name: & therefore ỹ case was H.29.Ed.3.fo.7. That where aduowsō of a church did belōg to a Priory which Priorie was seised into ỹ kings hāds *ratione guerre*, and letten againe to farme for a rēt to the Priour, & afterward the king graunted away the patronage of the priory to a man and to hys heires, and the custody (during the warre) of the Priorie with all that belongeth to the same of the rēt reserued with al the profits of the priorie that the king had seised, And yet though that thaduowson passed not, for that it was not named, But if there bee wordes in the kinges graunt that do amount to asmuch as therpresse naming of the thing or cōtenuaile as much, then that thing passeth as farre forth as if it were expressely named. And

therefore

therefore, if a manner to the which aduowson is apendant be in the kings hands by eschete or purchase, & the king geeueth the manor as fully and as wholly as such a one held ẏ same before the eschete or purchase, in this case thaduowson passeth, & so it is agreed in 43. E. 3. fo. 22. And learne forasmuch as this statut maketh mencion but of 3. things, that is to say, knightes fees, aduowsons of churches, & dowers, whether in such case any other thing then aduowson which is appendant or appurtenant should passe by wordes *cum pertin.* without naming of it. For it appeareth in 18. Ḥ. 6. 12. that where a Leete was within a towne & the king granted the towne *cum pertin.* not naming ẏ Leete, & it was thought the Leets should passe therby. But the reason was there because it was parcel of the towne, and that ẏ is parcell or incident to another thing, passeth by graunt of the thing without making any mencion therof. And therfore if the kynge be seised of a corody by reason ẏ he is a patron of a priorie, & grãteth away the patronage wout making any mencion of ẏ corody, yet the grantee shal haue the Corody: & so it is iudged 26. H. all. Ṗ. 53. And yet the kings graũt of a ward shall not haue *Gard per cause de garde* if expresse mẽcõ be not made therof *Gard* 70. Ṗ. 33. Ḥ. 6. And so it is if one be to haue restitution of the aduowson *vna cum exitꝫ* and the church becommeth void, and the king makes him restitutiõ with ẏ meane issues and profits taken, yet he shal not haue this aduoydãce that is so fallen without expresse mencion bee made therof in his restitutiõ, as appeareth in Ṗ. 18. E. 3. 21. & Ṗ. 24. E. 3 29. Ḥ. 39. E. 3. 21. & Ṗ. 46. E. 3. *Graunt* 60. And yet if the kinge be seised of aduowson and the church becommeth void, and he graunteth the aduowson away, hys highnesse shall not now present nor take the benefite of the auoidance, as appeareth in T. 9. Ed. 3. 26. Therfore enquire what the reason is of these diuersities, and what is ment by these wordes in

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the statute *Dotibus cum acciderit ad predictum manerium vel terram pertin.* For as I suppose these woordes serue to none other purpose but where the king is to assigne dower, & hee graũteth ouer the maner *Durante minore ætate* of ỹ heire that is in ward to another, this patentee shall not haue ỹ assignement of dower if mencion be not made therof in his patent. Howbeit learne & enquier what is the true meaning of the said woords.

Le roy auera chattels forfaits & an, iour, & waſt. Ca.16.

ITem rex habebit omnia catalla felonum damnatorum & fugitiuorum, vbicunque fuerint inuenta, & ſi ipſi habeant liberum tenementum, tunc illud ſtatim capietur in manum domini regis, & rex habebit oẽs exitus eiuſdem per vnum annũ & vnum diem, & tenementum illud vaſtabitur & diſtruetur de domibus, boſcis & gardinis, & alijs quibuſcunque ad predictum tenementum ſpectãtibus, exceptis hominibus quorundam priuilegiatorum inde per regem. Et poſtquam dñs rex habuerit annum diem, & vaſtũ, tunc reddatur tenementum illud capitali domino feodi illius niſi prius faciat finem pro anno, die, & vaſto, de conſuetud' tamẽ dicitur, quod poſt annũ, & diem, terre & tenementa felonum in Gloc. reddentur et reuertentur proximo heredi, cui debuerunt deſcendiſſe ſi felonia facta non fuiſſet. Et in Kent in Gauelkind the father to the bough, ỹ sonne to the plough. *Ibidem omnes heredes maſculi participabunt hereditatem eorũ, & ſimiliter feminæ: ſed feminæ non participabunt cum maſculis. Et mulier habebit poſt mortẽ viri medietatem ꝑ dote ſua. Et ſi mulier fornicetur in viduitate, perdet dotẽ ſuã, vel ſi ſit deſpõſata viro.* Before this statut *Glanuil* did writ in this wise in his viii. booke ca.17. fo.59. vnder ỹ title *De vltimis heredib⁹. Notandũ quod ſi quis de felonia conuictus fuerit, vel confeſſus in curia & de dño rege tenuerit in capite, tunc tam terra quam omnes res mobiles ſue & catalla penes quemcumque inueniantur, ad opus domini*

regis

regis capientur sine omni recuperatione alicuius heredis sui, si autem de alio quàm de rege tenuerit, is qui vtlagatus est, vel de felonia conuictus, tunc quoque omnes res eius mobiles Regis erunt. Terra autem per vnum annum permanebit in manu domini Regis. Elapso autem anno, terra eadem ad rectum dominum scilicet ad ipsum de cuius feodo est, reuertetur, veruntamen cum domorum subuersione, & arborum extirpatione. Et generaliter quotiescunque aliquis aliquid fecerit vel dixerit in curia propter quod per iudicium curiæ exheredatus fuerit, hereditas eius ad dominum feodi de quo illa tenetur tanquam Escaeta solet reuerti. Forisfactura autem filij & heredis alicuius patrem non exheredat, neque fratrem, neque alium quam se ipsum. Preterea si de furto fuerit aliquis condempnatus, res eius mobiles, et omnia catalla sua vicecomiti prouinciæ remanere solent, terram autem, si que fuerit, dominus feodi recuperabit statim non expectato Anno. By this it should appeare that in *Glanuilles* tyme, for theft onely the shirife should haue the goods that were forfait, and that as it should seeme to his owne vse, and not to the kinges. For hee sayth, the lordes in that case should recouer their Escheates before the yere, day, and the waste. Howbeit this statut made since that time geues all felons goods to the king without any exception. And hereupon it is to be seene first what is comprised in this word *Catalla*. *Catalla* is a generall word, which comprehendes as well Chattels mouable as not mouable. For leases for terme of yeares are within this word *Catalla*, as appeareth by *Bracton* in his v. booke in the title of forfaiture of Felons, saying: *Quòd terminum annorum erit domini regis, vt catalla. Quia accipit terminum ad similitudinem catallorum.* And therewith agreeth the booke in M. 39. H. 6. 35. Also vnder this word *Catalla* is taken the issues & profits of landes & tenements of them that flye for felony vntill such time, as they be attainted or acquited. And likewise of the landes & tenementes of Clerkes conuict, vntill such time as he hath his purgation, I meane landes and tenements as wel of their wiues ryght, as of their

their owne right, & so is the booke *Forfeiture* 16. & *Corone* 374. H.4.E.2. & 3.E.3.*Coron*.356. Also vnder this word *Catalla* are taken the emblemēts ỳ were growing vpon the ground at the time that the forfaiture of ỳ goods first began to take place, as appeareth *Corone*.344.3. E.3. Also vnder this word *Catalla* is comprised a right of accion to goodes, as where goods be taken away wrongfully from the felon. M.6. H. 7.fo.9. or where one is endebted to the felon by obligation M.19.H.6.fo.47. or is accomptable to the felon for any receipts or otherwise, & this appeareth H.28.E.3.fo.92.& 50. *Ass*.2.& *Trauerse* 33.A.32.li.All. Also vnder this word *Catalla* is taken sometimes goods wherin the felon hath no property, as if a man deliuer money out of a bagge, or corne out of a sacke, to one to keepe, which is afterwardes attainted of felonie, that money or corne in this case is forfaited. Like law is it, if a theefe ỳ steales goods severally from sundry persons, & afterwardes is attainted for one of the said felonies, by this one attainder ỳ goods ỳ are stollen frō the other bee also forfaited to the king. A.3. E.3.*Coron*. 317. 323. & 334. Like law is it, if one steale goodes & before he bee attaynted thereof he killeth him selfe A.3.E.3.*Coron*.318.& 319. or dyeth in prison, or abiures the Realme, confessing another felony, then ỳ for the which he fled to the Church, in these cases he forfaiteth ỳ goods ỳ he did steale *Coron*.379.380.H.12. E.2.3. E.3.*Coron*.162.H.8.E.3.fol.11. M.44.E.3.fo.44.26.li.All.P. 32. So is it if the wife kill her husband, she forfaits ỳ goods of her husband *Coron* 423. 8.E.2. *It Canc*. Then let vs see further what may be said vpon this word *Felonum*. If thoffence that is committed be felony, then is it properly within the compas of this word *Felonum*, & he that commities the offence shalbe said *Felon*: Notwithstanding that he therfore shal not suffer death: as in a case where one killeth another *se defendendo*, *Coron* 116.M.16.E.3. or by misaduenture, *Coron*. 302. 43. E.3. this offence is felony, and hee that committes it shall forfait his goods, notwithstanding that he obtayne

pardon

pardon of life. For it was at ỹ kings pleasure to graũt par don or not. But so shall not hee that killeth one that would robbe him in his house, or ỹ officer that killeth one that will not be rested, nor he that killeth any thing not yet borne, as a childe in his mothers belly, nor ỹ person that is straught that killeth another in his madnesse, 12. Ed. 3. *Dower* 183. & *Forfaiture* 53. For in all these cases it is not felony. The wordes be further *Damnatorum & fugitiuorum*. Sometymes the king shall haue his chatels, although hee be not conoepned of the felony, as if a man be arrested for felony, & afterwardes breakes the arrest, & the other ere he can take hym againe, killes him, in this case hẏ is killed shal forfait his goods, and yet he was neuer attainted of thoffence. Lyke law is it if he bee killed in the first arrest where he woulde not be arrested. And this appeareth in 3. E. 3. *Coron* 312. & 290 Howbeit since that time there was a statut made Anno 34. Ed. 3. cap. 12. Which seemes to alter the lawe in these cases if it be not that you will say peraduenture that hee shall forfait them *quia fugam fecit. Ideo quære.* He that is *felode se* shal forfait his goods and yet he was neuer attainted. Like law is before, of the clerke conuict, And so is it of such as stand mute. Ỹ. 34. E. 3. *Eschete* Pl. 10. or challenge aboue the number of two enquestes. Then further this word *fugitiuorum* is taken such as flye or withdraw them selues for the felony that they be endicted, appealed or accused of, for that makes a great presumption against them, as *Bracton* saith in his second booke vnder the title *Ad que restituatur vtlagatus*, and for that presumption sake shall the vtlary proceede whether he bee guiltie of the felony or not. And also saieth hee in the said booke *quod vtlagati de felonia gerunt caput lupinum, et secum suum portant iudicium, ita quòd sine iudiciali inquisitione pereunt, quia merito sine lege pereunt, qui secundum legem viuere recusauerunt, et hoc ita si in capiendo*

fugiant

fugiant vel se defendant. Si autem viui capti fuerint vel se reddiderint, vita illorum & mors est in manu domini Regis, et quicunque aliter captum interfecerit, respondebit pro eo sicut pro alio, nisi sit in locis vbi consuetudo se habebit in contrarium, videlicet in com. Hereford, et Glouc.

And in another place hee saith, *Quod nullum crimen maius in obedientia, quia pro contemptu & inobedientia poterit quis excomunicari, sicut pro quolibet peccato mortali, cum omnibus subditi debeant esse Regi tanquam precellenti, maxime in honestis, & ducibus eius tanquam ab eo missis, & sic concordat lex diuina aliquantulū cum humana.* And also saieth *quod vtlagatus de felonia forisfacit patriam & amicos, forisfacit que pacis sunt, forisfacit que legis sunt, forisfacit que iuris sunt, & possessionis, & forisfacit actionem ante vtlagariam sibi datam.*

Thus by the way, haue I noted vnto you such thynges out of *Bracton*, as me seemeth bee notable, and make somewhat for this purpose: Although I needed not to haue gone so farre as to outlawrie for erpositiō of thys worde *fugitiuorum*, but myght haue rested at the flying. For if one flye for the death of a man, and this presented before the Cozoner hee shal forfait al his goodes that he had the day of that presentment or at any time since, till hee be acquited of the said death. *Forfeiture* 35. Anno 3. E. the 3. And notwithstanding ỹ an enquest vppon his arraynment doth afterwarde acquyte hym, and also finde that hee did not flye, yet his goodes remayne still forfait, as it appeareth 22. libro Assis. fo. 96. & *Forfeiture* 29. & 32. M. 5. H. 4. *Coron* 296. 3. Edwarde the third. Lyke lawe is it, where one arrayned of felony before Justices, is founde not guyltie of the felonye. Holbeit yt is founde that hee withdrewe hym selfe for the sayed felony, nowe shall hee forfait his goodes but noe profites of lands as hee shall doo in the other case where it is founde before the Cozoner, For when the forfayture shall haue

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no further relation, but to the day of the presentment, and not to the day of the flying, then when at the same day hee is acquited of the felony, then is the kinges title gone, as to the landes, and so consequently gone as to the issues. And thys appeareth 3. Edward the third *Corone* 244. Also there is another maner of flying, for the which a man shall forfait his goodes, and that is where in appeale or endictment of Felony, the partie that is appealed or endicted will not appeare, but suffer the Erigent to bee awarded agaynst him, hee thereby forfaiteth his goods, and the profites of his landes, which he had the day of therigent awarded or at any tyme after. And notwithstanding that hee afterwardes happen to bee acquited of the said felony, yet the forfaiture remaynes. For when hee tarieth the awarding of the erigent, it appeareth of record that he hath withdrawen himselfe, and thys you shall finde in twenty two Assise 81. and 41. assise 3. Yolbeit herein is there heede to bee taken lest there bee errour in the awardynge of the said Erigent: For if there be, hee shall then forfayt nothing, as if the Erigent bee awarded against the Accessorie before it bee awarded against the principal, or before the principall bee attaynted, or if an Erigent bee awarded against one that hath a charter of pardon for the felonie (of elder date then is the awardinge of therigent) and hath found suertie according to the Statut, and the same retourned into the Chauncerie before therigent awarded: For in these cases hee shall ouoid the forfeyture vppon the matter shewed P. 43. Edward the third 18. Contrarie lawit is, if after the Erigent awarded the appeale doe abate for insufficiencie, or for that that he that is outlawed was imprisoned meane betweene the awarding of the Erigent and the outlawrie pronounced. For in that case if hee reuerse the vtlarie, yet his goodes remaine

maine still forfait. Howbeit if he were imprisoned at the time of the Erigent awarded otherwise it is, and thys appeareth *Forfeiture* 19.H.19.E.3. & 31.H.30.H.6. Also it is to bee noted that one may flie for felony, and yet he shal forfait nothing, as where one is arrested for suspition of felony and escapes, yet for this hee shall not forfait his goods if hee were not taken with the maner, or at the suit of the partie, or endicted of the same, as it appeareth 42. li. Ass. 5. *Quere* if he be endicted afterward, whether he shal then forfait them or not. Also an accessorie after the felony committed shal forfait nothing vpon a *Fugam fecit*. Otherwise it is of accessories before the felony committed, as it appeareth H.4.H.7.18. But hee that withdraweth him selfe but for *Petit larcenie* shall forfait his goodes, as it appeareth 8. E.2. *Corone* 406. *tamen quære*.

And note for a generall rule, that the Townelhip where the goodes of felonies or fugitiues be found, shall alwayes aunswere the king of them, and the Shirife of the issues & profits of the lands: & therefore the townelhip may seise thē for the king. For it is no plee for them to say they were not deliuered vnto them. And this appeareth in *Fitzherbert*, in the title of *Corone* 390.366.300.347.290.398. and 36.H.6.25.22. li.Ass.P.81.H.11.H.4.fol.41. H.13.H.4.fo.13. But at what time the goods of a felon or fugitiue shalbe seised, it is further to be seene, and how the attaindor shall haue relation. When it is found by enquest before the Corroners *quod fugam fecit*, by and by the shirife shal seise his landes into the kinges handes by word onely, without taking any enquest for the same purpose, and also shall seise all his goodes into the kings handes, and take an enquest as well of freemen as of villeins to appraise them, and cause the price to be enrolled to the corroners, & to deliuer them to the Townelhip to make aunswere thereof to the king. And this appeareth 22.li.Ass.P.96. And herewith agreeth the statut of Corro-

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ners, and also *Britton fol.* 4. Where you shall see this matter set forth more fully. And in H. 43. E. 3. 24. it is said that the kinges minister may seise the goodes of a felon before attainder, and if the partie find suertie, then he to leaue thē in the custodie of the partie, or els in the neighbors custody. For the said minister ought not to carry them away wō him and T. 7. H. 4. 47. *Hull* saieth, that if one be ēdicted of felony, yet till he bee attainted his goods shall not bee removed out of his house, but in the meane time shal be in his neighbours keeping, & he to be found of the same. And in the Register there is a writ. *Quòd tenta & bona taliter capta, videantur, imbreuientur, & saluò custodiantur per balliuum ipsius capti, qui securitatem regi inuenient eis respondend. si &c. saluis inde ipsi capto & familiæ suæ necessariis quam diu fuerit in prisona.* And so is *Britton* fol 17. Howbe it now by ẏ statut made in the first yere of king R. 3. ca. 3. it is ordeined ẏ none shal seise ẏ goods of any persō arrested or imprisoned, before that they be attainted, or that ẏ goods be otherwise forfaited, vpō paine to pay the double value therof. This statut extēdeth not to any other, but to such as be in prison: For by the statut de *Proditionibus* 25. E. 3. ca. 14. If one be endicted of felony, which is not imprisoned, the sherife at the seconde *Cape* shall seise his goods, & yet they be not at that time forfeited. And also the statut of R. 3. doth not extēd to lands, but only to goods. Thē for the relation, as for the goods it hath no relation but onely from the day that the forfeiture is presented, or verdict geuen, & therefore it is said in *Forfeiture* 30. H. 33. E. 3. that if hee sell them before he bee attainted, the sale is good, but for lands it hath relation to the day of the felony committed, be it ẏ the attainder be by verdict or vtlary, as it appereth H. 38. E. 3. 31. & T. 30. H. 6. fo. 5. or be it that he bee attainted without proces of law, as in the cases aboue remembred, where hee is killed in the flying, as appeareth *Corone* 289. *a.* 3. E. 3. And note, that if the attainder and office found of his landes bee

both within the yere of the felony firſt cõmitted, that it ſhal haue no relation for ẏ yeares profits, otherwiſe it is if it bee after the yere, as appeareth in *Corone* 85. *A.3.E.3.* This booke muſt be vnderſtand as I take it, where ẏ attainder & the office bee before any day of paymẽt wtin the yere. The wordes of this chapiter be further: *Et ſi ipſi habeant liberum tenẽtũ, tunc illud ſtatim capietur in manũ dñi regis, & rex habebit oẽs exitus eo iuſdem per vnum annum & vnum diẽ, & tenẽtũ illud vaſtabitur et deſtruetur de doĩb°, boſcis, & gardinis, & aliis quibuſcunq; ad predictum tenẽtum ſpectãtibus.* It ſhould appeare by *Glanuil* in ẏ beginning of this chapiter, ẏ ẏ cõmõ law was as much before ẏ making hereof in all caſes of felony, ſauinge for theft, in which the king had no yere & day. Howbeit after *Glanuilles* time, ẏ ſtatut of *Magna charta* was made, which ſaith in ẏ 22. chap. therof, *Nos nõ tenebim° terras illorũ qui cõuicti fuerint de felonia, niſi p vnũ annum et vnũ diẽ, & tunc reddãtur terre illæ dñis feodorũ.* By this it ſhould ſeme this ſtatut doth remit ẏ waſt becauſe it ſpeaketh nothing of it, or els peraduẽture you wil ſay, that this word *Niſi*, argues and proues ẏ the king before the ſtatut of *Magna charta* might haue holden it as long as he would, but to the contrary of that expoſition is *Glanuil* as it appeareth before. Alſo *Bracton* which wrot ſõe what after his time. For by *Bracton* in his ſecond booke it appeareth that before the making of ẏ ſaid ſtatut of *Magna charta*, the king had nothing els but the waſt, & to the intent hee ſhould remitt the waſt, the yere & day was afterward geeuen to the king: for theſe bee his wordes in the title of Vtlary: *Si vero terram liberam habuerint vtlagati, ſtatim capienda eſt in manum domini regis, & tenenda per vnum annum & vnum diem, ad capitales dominos poſt terminum illum reuerſura, ſi de alio tenuerit quam de rege: ſi autem de rege, tunc erit Eſchaeta ipſius regis, & hoc verum eſt, quod per talem terminum remanebit in manu domini Regis, niſi ipſe capitalis dominus, vel alius finem fecerit pro termino regi habendo, ſed quæ ſit cauſa quare terra remanebit in manu domini regis, videtur quod talis eſt, quia*

remura cum quis fuerit conuictus de aliqua felonia in poteſtate domini regis, erit proſternẽdi ædificia, extirpandi gardina & arãdi prata, & quoniam hmoi vrgebantur in graue damnum dominorum pro communi vtilitate, prouiſum fuit, quod hmoi dura et grauia remanerent, & quòd dñs rex propter hoc haberet commoditatem totius terræ illius per vnum annum & vnum diem, & ſic omnia cum integritate reuerterentur in manus capitalium dñorum, nunc autem petitur vtrum. s. Finis prò termino, & ſimiliter pro vaſto. Et non video rationem quare, niſi quod terminus bene poterit eſſe per ſe ſine vaſto, eo quod fugitiuus & vtlagatus non ſolum delinquit erga eum qui ſequitur et appellat, ſed erga regem, cuius pacẽ infringit contra fidem ſuam cui tenetur, quia quilibet cum faciat ſacramentũ iurat, ſalua fide domini regis. Thus our authors agree not vpon this yeare and day, for *Bracton* is contrary to *Glanuill* that wrote before him. How be it *Britton* which was likewise before the making of this statut of *Prerogatiua* agreeth wᵗʰ *Bractõ* as it appeareth in the booke fo. 14. adding further that the king shall not haue the yeare & day of land ẏ is holden only for terme of life, or yeres, or by freſh diſſeiſin, or in fee ferme or in morgage. And ſo is *Bractõ* alſo therwith agreeing in ẏ ſecõd booke, but now ſince his time this ſtatut of *Prerogatiua* was made, which geues the king, as you may perceiue, both the yere, day and waſt. And firſt he ſaith *Quod rex habebit cẽs exitus eiuſdem per vnum annum et vnum diem.* By this it ſhould appeare, ẏ the king ſhould not haue the iſſues of the lãd but by a yere & a day, but yet it is clere, ẏ he ſhall haue the iſſues alſo from the time of ẏ felony don, vntill ẏ time his highnes hath had the yere, day, & waſt, & not the lord (allowing ẏ that is to be allowed for finding of the priſoner) for it cannot be intẽded, ẏ the lord ſhould haue the meane profits, becauſe ẏ land ſhal be deliuered vnto him wᵗʰout profit, ẏ is to ſay waſted, & deſtroyed. And therwith agreeth the booke in *Corone*, 280. A. 3. E. 3. & pl. 49. E. 3. fol. 11. And there it appeareth, ẏ if an office be found 20. yeres after the attainder, the king ſhall

haue the profits from the time of the felony cõmitted vntill the yeare & day next after the office found. For though the lord be intitled to haue theschete, yet the kinges title for the yeare day & waſt goeth before the lords: For the words bee, *Poſtquam dominus rex habuerit annum, diem, & vaſtum, tunc reddatur tenementum illud capitali domino.* Also by thys word, *Reddatur*, it ſeemeth the lorde cannot enter into his eſchete after office found, but is driuen to ſue an *Ouſter le main* for the ſame out of the kinges hands, as it appeareth in *Trauers* 48. A.8.E.2. but if a ſtraunger abate before office, the lord ſhall haue a writ of eſchete againſt him, & recouer, yet that notwithſtanding when an office ſhall be found, afterward the king may ſeiſe for the yeare, day, & waſte, & ſhall be aunſwered of the meſne profits, like as it is when the kinges tenaunt in chiefe dieth, his heire of full age, an eſtraunger abateth, the heire may haue aſſiſe of Wordaunceſter, if he wil, & recouer againſt the abator, & yet vpon an office found, afterward the king ſhall ſeiſe for primer ſeaſon, & bee aunſwered of all the meane profits, & the heire driuen to ſue liuerie. Further thẽ let vs ſee in what caſes the king ſhall haue *Annum, diem, et vaſtum*, & in what not. The king ſhal not haue *Annum, diem, & vaſtum* of clerkes conuict after verdict, becauſe hee forfeits no lãd *Corone* 332. A.3.E.3. Like law is it of lands in gauelkind, where the father is hanged, but otherwiſe it is, if he be outlawed or abiured for felony, for there ẏ kinge ſhall haue the yere, day, and waſt, and this appeareth in *Preſcription* 50. A.8.E.2. If ẏ huſbãd be attainted of felony, ẏ king ſhall haue the yeare, day, & waſt of the lãds of ẏ wife, & yet in that caſe ẏ lords ſhal not haue their eſchets. But what thẽ ẏ huſbãd might haue done waſt, & the wife had had no remedy for the ſãe, & by ẏ ſãe reaſõ ẏ king may do as much, & this appereth in *Corone* 327. A.3.E.3. & alſo in *Bracton* in his ſecõd booke, & alſo it ſhould there appeare, ẏ ẏ wife is driuẽ to ſue an *Ouſter le maine* after ẏ death of her huſbãd. If one be arre-

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ted for felony, & breaks the arrest, so that in ỹ pursuit of him he is killed, because he would not otherwise be taken, ỹ king in this case shall haue the yere, day and waste, as it appeareth *Corone* 312. & 290. A. 3. E. 3. If a man commit felony, and hath his charter of pardon, yet the king shall haue the yeare, day & waste, & the lords their eschetes, & this appeareth *Corone* 308. A. 3. E. 3. for the pardō doth not restore him but to ỹ law. For though the king would pardon him with words of restitution, yet his grace could not thereby restore him to the lāds holden of other. And note, ỹ the king shall haue the yere, day & waste of lands in auncient demesne, & it is to bee that the tenant might haue sold the said landes against the will of the lord, as it appeareth *Corone* 310. A. 3. E. 3. & that notwithstanding that the said landes were alwaies vsed to bee surrendred by the rod, & to passe by surrender. The wordes of the statut be further: *Exceptis tenuris illō quorundam priuilegiorum inde per regem*. That is as much to say, except such as haue *Bona & catalla felonum* by the kinges graunt, for a man cānot prescribe to haue *Bona & catalla felonum*, as appeareth T. 46. E. 3. f. 16. Y. 1. Y. 7. f. 23. Y. 8. Y. 4. fo. 2. For none maye haue this prerogatiue of yeare, day, and waste, but onely the King, although he would claime it by charter from the king or otherwise, as it appeareth *Corone* 310. A. 3. E. 3. But when the king is seised of it, he may cōmitt it ouer as appeareth by *Bracton* in hys sayd second booke. But if the land whereof ỹ king should haue the yere, day and waste be vnder the yerely value of iii. s. iiii. d. it is vsed to be remitted for the smalnes and simplenes of the thing, as appeareth *Corone*, 327. A. 3. E. 3. for it should cost more the suing of it out of the Kings hāds then the thinge is worth. And note the custome of *Glouc.* comprised in this statute, whereby it shoulde appeare, that notwithstanding any such custome, yet the king should haue *Annum & diem*, but not so of landes in Gauelkind, as I haue said before.

Diuers other Prerogatiues there bee, which y king hath by the order of the common law, that bee not within this statut compised, a great part whereof vnder the title of Prerogatiue Master Fitzherbert hath most diligently noted in his great Abrigement, and so well placed there, that I doo of purpose omitt to reherse them here. The rest would requier so long a search, that vnles I had gathered and noted them already (as I haue not don in dede) I should be faine to pursue the whole body of the common lawes for the knowledge therof, wherunto time serueth me not, wherfore at this time mine intent is, not to meddle with them.

¶ Proces to be sued after the death of the Kinges tenaunt in chiefe.

Cap. xvii.

By a statute made in the 33. yeare of ỹ late king of moſt famous memory H.8. ỹ 22. chapiter it is ordeined & prouided among other thigs that no perſon or perſons hauing lands or tenements aboue the yerely value of fiue pounds ſhal haue or ſue any liuery before inquiſition or office found before the ſcheter or other commiſſioner or cõmiſſioners, by vertue of the kings writ, or cõmiſſiõ to be directed out of ỹ kings chaũcery or other courts, hauing authority to make ſuch writs or commiſſions for ſauing of liueries, which writs or commiſſions ſhall not paſſe out of ỹ chaũcery, nor any other courtes, but by a warrant or bill to be aſſigned & ſubſcribed with the hãds and names of the maſter of the Kings wardes and liueries, ſurueior of his liueries, or the attourney & receiuour of the court of wardes & liueries, or thres, twe, or one of them, to be directed and deliuered to the chaunceiour of England, or to any other chancellor or officer hauing power to award ſuch writs. And if the landes or tenementes whereof any inquiſitiõ is to be had by vertue of any ſuch writ or cõmiſſiõ exceede ỹ yerely value of v.li. that then ſuch as ſue for ſuch writs & commiſſions ſhall pay for the ſeale and writing thereof ſuch fee as hath bene accuſtomed. And if the ſaid landes & tenementes whereof any ſuch inquiſitions & offices are to be foũd by vertue of any ſuch writ or commiſſion exceede not the ſaid yerely value of v.li. then ſuch as ſhal ſue for ſuch writes or commiſſions ſhall pay for the ſeale of euery of them vi.d. and for the writing vi.d. and not aboue. This Statute doth

not set forth the name of the writ or commission that shalbe sued, howbeit these wordes ẏ folow, that is to say (for suing of liueries) do somewhat open the minds of the makers of this statut, & declare ẏ their meaning was of the *diem clausit*, & such other writs or commissions as serue for the purpose, & not of euery writt or commission, for so might an office bee found by a wrong writ or commission, which should want matter, or be otherwise insufficient to make liueries. But learne and enquier, if after a good writ or commission sued forth, the office that is found is not sufficient, whether the party shall haue his liuery or not without suing a *melius inquirendum*, or a newe office, because that some paraduenture will say that the wordes of the statut be performed, that is to wite an office or inquisition is found. But to ẏ it may be answered and said that it is no office when it is insufficient at least wise toward the party that should sue liuery thereupon although it be a good office toward the kinge if any thinge therein contained bee for his benefit. And learne also if the kinges tenant dye seysed of landes in diuers counties whether by force of this statut he shall haue an inquisition or office to be found in euery county where the landes lie, for so it is vsed to be done vpon al generall liueries, & hee ẏ sueth his generall liuery otherwise, missueth ẏ same, & is an intruder vpon the kings possession, howbeit peraduēture you will say, that if ẏ landes excede ẏ yerely value of rr. markes, hee must sue a special liuery, & not a generall, & therfore it makes no matter for ẏ inquisitiō or office, & ẏ the wordes of ẏ statut will beare it well enough if there be but one office foūd: But as to ẏ it may be said, ẏ the meaning of the statut was not so for the king can neuer be fully enformed of his title, vnles there be an office foūd in euery shere, & also by finding of seuerall offices one record may be better for the kinge then an other, whereof his grace may take auātage, for the best shal be take for ẏ king. Thus it appeareth by statut, how that of

lands aboue ỳ yerely value of x.li. inquisitiõ must be made & an office found after the death of the kings tenant beefore liuery can be had: and that must be be a writ of *diẽ clausit extremum* for that is the proper writ that is to bee sued for that purpose, if any suit be made within the yeare after the kings tenants death, or a speciall commission in the nature of the writ of *diem clausit*. For vpon a generall commission to enquier generally of al wardes, no particuler person can haue liuery. And if hee tarry till after the yeare, then hee cannot pursue any of these, but for his remedy must sue a writt called *Mandamus*, or a commission in nature of that writ, and therupon to cause an office to be foũd, and so to haue liuery. But if an office bee once founde by *diem clausit*, and the heire dieth in the kinges ward, his heire must sue *Deuenerunt*: and no *Mandamus*, although it be after ỳ yere of the death of him that died in ward, & so is the rule in ỳ regester. Sometimes it happeneth that after deliuery of the writ of commission, & before office found, the eschetor dieth, or is remoued frõ his office, in which case then the proces ỳ is awarded to his successor, is a writte called *Datur nobis intelligi*, but if office bee found before his death or remouing, wh'ch office is not returned, then shall there be a *Certiorare* awarded to his executors to returne the same. For it is a matter of recorde as soone as the Iurors haue put their seale vnto it, notwẽstanding it be not returned. And note ỳ thawarding of this writ of *diem clausit*, or speciall commission is parẽptory to him ỳ sueth for it. For if hee leeseit, or be takẽ frõ him w̃ force, hee geat̃ no moe writs or cõmissiõs for the landes in ỳ county, & this appeareth in the new *Natura bre.* fo. 253. c. Notwithstanding. 14. E. 4. f. 5. it is touched by the way, that in such cases hee shold haue a new writ, *Ideo quære*. But after office once foũd by a *Diẽ clausit*, or special cõmissiõ, as wel the king & partie therby are bound as euery other stranger: for so much lands as are cõprised within the office, & neither ỳ king ne the par-

tye

tle, nor any other shall haue any mo writs or commissions to enquier any further of these landes, except it bee in suche cases as I shal hereafter recite, for so the lawe should neuer haue end, but newe heires might be found euery day by office which were inconuenīēt, & the king should not know to whom to make liuery, and this appeareth 19. 14. E. 4. 5. & H. 2. H. 7. f. 12. M. 4. H. 4. fo. 15. But where after office foūd it is surmised for the king, that his highnes hath a better title, then was found for him by the first office, whether the matter surmised may stād with the matter foūd by the first office or not, yea although it be more contrariant or repugnant, it is not materiall: but in such cases a newe writ or cōmission shall be awarded. As take the case to bee this: By ỹ first office it is found, the kinges tenant in chiefe died seised his heire within age, where in deede hee died wtout heire, so that therby the lands ought to haue escheted to the king. Or that he was tenant in taile, & died without issue of his body whereby the landes ought to haue reuerted vnto the kinge, in these cases the court shall award a newe writ or commission for the king. Like lawe is it where ỹ daughter is foūd heire by office, and afterward the sonne is borne. Or where there is but one daughter found heire by office, where there ought to haue bene two found heires. Or if by the first office one is found heire of ful age, which is not heir in dede, but an other is heire which is wīn age: In al these cases there shall be a newe writ or commission awarded, *Causa qua supra*, as it may appere *Liuery* 28. T. 12. R. 2. 19. 14. E. 4. f. 5. & M. 4. H. 7. f. 6. & 30. li. all. 28. yea & a more straūger case, as it should appere in ỹ new *Na. bre.* f. 261. & 262. that is to say, where ỹ king was to haue no benefit at al more then he had by the first office, & yet a newe commission was awarded, and therfore the case was there, the second brother was found heire by the firste office, & of full age, nowe the eldest had a commission being also of ful age, to finde him heire, and therupon had his liuery

uery. So is it where .ij. be found daughters & heires to one man of certaine landes, where in deede parcell of the sayd land was geuē to one of the said .ij. daughters in frāke mariage, now she that claimed the frank mariage had a speciall commission to enquire of the same: and yet by that second office the king had no benefit, *Ideò quære*. For this *Natura brevium* semeth to impugne the bookes before rehersed. And like as hee may pray a new writ or commission in the cases aboue rehearsed before liuerie had, euen so may hee doe in the like cases after liuerie had, if the liuery be a generall liuery, & thereupon as soone as the title is found, the king shall reseise, but not without a *Scire facias*, because the statut made at Lincolne, hath so prouided, as I shall open more fully whē I come to that place, & that in al these aforesaid cases a new *Diem clausit* may be as well awarded, as a new commission, as it appeareth, An. 29. li. Ass. Pl. 30.

¶ What thing shalbe in the king without office or seisure, & what not, & whereby an office onely without any seysure or other proces the king shalbe in possession, & where not, & where he shalbe in possession without an office, but not before a seisure, & how the king may be intitled by any other record, as well as by an office, & where a man may enter as well vpon the kings possession, as any other.

Cap. xviij.

By a Statut made the 33. yere of the late king of famous memory H. 8. the 20. chapter, it is amongest other things prouided, that if any person or persones shalbee attaynted of high Treason by the course of the common lawes or statutes of this Realme, that in euery such case, euery such attainder by the common law shalbe of good strength, value, force & effect, as if it had ben done by authoritie of parliament

ment. And the kings maiesty, his heires and successors shal haue as much benefit & aduãtage by such attainder, as well of vses rights, entries, conditions, as possessions, reuersiõs remainders, & al other things, as if it had bene done and declared by authoritie of parliament, and shalbe deemed and adiudged in actual & real possession of the lands, tenemẽts hereditaments, vses, goods, cattels, & al other things of the offenders so attainted, whiche his highnes ought lawfully to haue, and which they so beeing attainted ought or might lawfully loose & forfeit, if the attainder had ben don by auctoritie of parliament without any office or inquisition to bee found of the same, any Law, Statute, or vse of ỹ realm to the contrarie thereof in anywise notwithstanding. This Statut makes it cleere and without question, that in cases of high Treason, the Landes of him that is attainted are in the kinge by and by without any office. But for other attainder it remaines as it was at the common law, and therfore learne if one which holdeth of the king be attainted of petit treason or felony, whether in this case by the attainder his landes be in the king without office, & me seemeth by attainder and death together they should be in the king i law howbeit not in deed, vntil such time his highnes seise them by his officer, or that an office be therof found, for by the attainder ỹ lands are forfeited to ỹ king by matter of record & thẽ whẽ ỹ party dieth, either ỹ freehold must be in suspence or els adiudged in ỹ king in law, for he ỹ was seised hath corrupted his blood, & is dead without heire, & therfore his highnes is become owner therof in law, & a possessiõ in law vested in him of the same lands, which his highnes at his will & pleasure, may make a possessiõ in deed, as soone as he wil take vpon him knowledge of ỹ said lãds, & seyse them by his officer. And therfore ỹ booke is agreed 27. 20. E. 4. f. 11. that if he ỹ is attainted be seised of aduowsõs appẽdant, as soone as ỹ church becõmeth void, ỹ kig may p̃sẽt wout any office

which

which proues that the king by thattainder was patron before any office found, or els how could his highnes present? & I see no difference betwene lands & aduowsons in this case, for aduowson is not so transitory toward the king, but that he may take ẏ presentment thereof at all times when hee will, *quia nullum tempus ei occurrit*. Howbeit learne what the lawe will in this case, for many mẽ are of ẏ contrary opiniõ And see in the booke Ma. 4. E. 4. 22. concerning this matter: & so note what is said of a possession in law, for as I take it, there may be a possessiõ in law in ẏ king, as wel as a possessiõ in dede, which possessiõ in law is euer wõut office or any other matter of record, as whẽ ẏ possessiõ is cast vpõ his highnes by a discent, reuerter, remainder, or eschet, or in title of his seignory or prerogatiue, as for wardship, primer seisin or for ẏ custody of tẽporalties of a bishop during the time ẏ the see his vacãt: in al these cases wõut any office or other matter of record, there is a possession in lawe vested in ẏ kinges highnes, ẏ is to say, for that ẏ doth discẽd, reuert, remain, or eschete, ẏ freehold is cast vpõ him in law, as it should be vpon a common person in ẏ like case, or els ẏ freehold should be in suspence, which may not be. T. 9. H. 7. 2. & 9. Ma. 49. E. 3. fo. 16. & *Estopple* 255. Ma. 4. E. 2. & of ẏ rest ẏ possessiõ i law of a cattle is in his highnes in right of his seignory, which his highnes at hys wil & pleasure may make a possessiõ in deede by entre or seisure *H. 21. H. 7. f. 7. M. 20. H. 4. f. 11. & 14. & P. 21. E. 4. f. 1. T. 24. E. 3. f. 54. M. 10. H. 4. f. 3.* but not to make it a possession in dede by his graunt, because there is a statut made in the 18. yere of H. 6. ca. 6. to the let thereof, which prouideth, ẏ all letters patents made of lands & rents before office found & returned, or wõin one moneth after, but only to him ẏ tendeth his trauerse, shalbe void. This statut extends onely to lands & tenemẽts, therfore of ẏ body of his ward his highnes may make a grãt notwithstãding this statut, as me semeth for ẏ is neither land ne tenemẽt: also notwithstãding ẏ this statut doth restraine the graũting of ẏ lãds & tenemẽts, yet the

seisin

seisin thereof remains & is in the king, as it was by order of the comm̃ō law, which is as I sayd before, in his highnes in lawe, although not in deede, vntill such time as hee hath made a seisin or an entre by his escheto⁹, or a grant thereof, which waieth both to a seisure & a grāt, in such cases where ỹ graunt may be good, & not restrained by a statute, vntill such time an office thereof be found. ffor an office that entitleth the king to the possession, is sufficient by it selfe without any seisure or entre of the eschetor to make a possession in deede in the king, if it be so that the possession were vacant when the office was found. But if the possession were not vacant, but an other then hee in whose right the kinge seiseth, was tenaunt thereof at the tyme of the finding of the office, then must the king entre, or seise by his officer before the possessiō in deede shalbe adiudged in him, 9. 14. H. 7. fo. 24, 15. H. 7. f. 6, 20. E. 4. f. 11. & 14. & 9. 21. E. 4. f. 1. yea and if his highnes seise not by the space of a yeare and a day after the finding of an office, then may hee not seyse without a *Scire facias* to be pursued against him that is tenaunt thereof. And of this matter you may see bookes 29. All. 30. 32. All. *Trauers* 32. 50. All. 2. & *Gard.* 105. H. 6. M. 2. But hereuppon is there a distinction to be made, whether that the kinge is entitled vnto by office, be it a thing manuel, and whereof profit may bee taken forthwith after the finding of the office or not. For if it be such a thing as is not manuel, and whereof there is no profit to bee taken forthwith, vntill such tyme it falleth, in that case, although the kinge bee in possession of the right of the thynge, yet is hee not in possession of the profit thereof, vntill such time as hys highnesse actually by his officer when it falleth taketh & perceiueth the sayd profit, as for example. The thing the king is entitled vnto by office is no lande, but auowson, rente, a or common, although that the king by this office bee patron of the auowson, or owner of the rent or common, and therby when the benefice becometh void, may present, or when the rent day commeth

commeth, may receiue the rent, or when the cõmon is to be taken, may vse the said cõmon, yet if the office that entitleth his highnes, be false, & he that was in possession at the time of ỹ office, taketh ỹ profit whẽ it falleth before the kings officer do take it, in this case this taking is no entrusion vpon ỹ kings possessions, for he was neuer seised in deede: where fore being driuẽ to his accõ, if his highnes bring his *Quare impedit*, or action of trespas, the defendãt may trauerse the office wõ him in the said actions, keeping stil his possession, & neede not to sue in the Chauncery for the trauersing of the same. Thus may you see a difference betwene a thing ỹ is manuel, & a thing not manuel, & what ỹ reasõ therof should be, learne, for as I suppose the reasõ of it is no other, but as I said before, ỹ when a stranger is tenãt at time of ỹ office finding, the office maketh no possession in deede in the king before an entry or a seiser. And thẽ whẽ the kings officer taketh not the profits whẽ it falleth, but suffreth him ỹ was in possession to take it, then was the king neuer seised, but hee stil remaines in possession, that was possessed at the time of the finding of the office, vntil such time as seiser be made for the king, which cannot be done at all times, as it may be of land, but only at such times as the profit therof to be taken that is to say, when it falleth, and that is now past for thys time, seing it is already taken, & therfore the king in ỹ case is driuen to his action. But *quere* whether his highnes may bee brought in possession in those cases by a claime, or not. And these cases may you see in the bookes of *H.17. E.3. f.10. P.21. E.4. f.1. P.5. E.4. f.3. H.4. E.3. f.1. & H.14. H.7. f.11.* Like law is it, where an office is found, which doth not entitle ỹ king to the possession by entry, but only by action, as where it is found ỹ the kinges tenant for terme of life, or yeares, hath done waste. *P.14. H.7. f.23. & 25.* or being his tenaunt in fee simple hath ceased by vj. yeres. *P.15. H.7. f.6.* or made a feffement by collusion cõtrarie to the statut of Marlebridge *T.12. H.7. fol.1. & 19. & H.7. folio.18.* or such like. For it is a

generall

nerall rule, that in all cases where a common person cānot enter, but is driuen to his accion, there the king cānot haue the possession, but by like action, or els by a *Scire facias* after office found in nature of the accion, for ỳ office in the case entitleth the king to no other thing, but only to the accion, as appeareth in Ỳ.21.Ỳ.7.fo.18. But *quære* of a feffement ỳ is found to be made by collusion cōtrarie to the statut R.34. & 35.Ỳ.8.ca.5.for in that case it seemes his highnes may enter without *Scire facias*, because the said statut appoints no accion to be sued in the case. And note, that in all these cases before, where the king is driuen to his *Scire facias*, or other accion, if the office be false, the partie may trauerse ỳ office with the king, keping still his possession, whether it bee in the Chauncerie, or any other Court, and needs not to sue any *Ouster le maine*, if it be found for him, because he was neuer out of possession. Then further let vs see in what cases the king cannot be intitled, but only by office or other matter of record, & in what cases he may, howbeit not to haue any possession either in deede or in law, vntill ỳ time there be a seisure made. And as to that, note, ỳ in all cases where a common person cannot haue a possession neither in deede nor in law without an entrie, there the king cannot haue it without an office, or such like matter of record, as where ỳ king hath title to enter for a *Mortmain*, or for a cōdicion broken, in this case ỳ king can haue no title, vntil such time as ỳ said *Mortmain* T.9.Ỳ.7.f.2. or cōdicion broken, Ỳ.2.Ỳ.7. f.8. be found by office, or by some other record, as appeareth Ỳ.15.Ỳ.7.6. So is it in diuers other cases cōcerning ỳ kingz prerogatiue, as in ỳ case of Idcots, of lunatikes which haue lands or tenemēts, or when his highnes is to be entitled for *annũ, diem & vastum* of persōs attainted Ỳ.49.E.3.11. or for an alienatiō wout licēce, or to seise ỳ tēporalties of a bishop for a cōtempt 21.E.3.3.29.30. & Ỳ.21.Ỳ.7.7. in al those cases his title must bee first found by office, or otherwise appeare of record, for these rightes his highnes hath only as king.

But

But if his highnes haue cause to seise ỹ lãds of his widow, ỹ hath maried her selfe without licẽce, his highnes may seise notwithstanding there be no office found of her mariage as it appeareth in ỹ newe *Natura breuium* fo.174. Learne what should be the reason therof, more then in the case of alienation before. Like lawe hath bene vsed where his highnes is to seise landes of priors aliens wỹn this realme *ratione guerre* his highnes doth it without any office, for in both these cases the kinges title is notorious ynough although it appere not of recorde. But yet in those cases his highnes must seyse ere he can haue any interest in the lãds because they bee penall toward ỹ party, & of these cases you shall finde bookes. H.21. H.7. fo.7. H.14. H.4. f.36. H.22. E.4. f.44. Other prerogatiues the king hath which extend onely to personal and transitory thinges, *ad bona & catalla felonum*, wreke de mere, *tresour troue*, or the profits of lãds of clerkes conuict of felony, or of persons outlawed in a personall action, to these thinges it semes the king is entitled although there be no office or other matter of record foũd of thẽ as it should appere H.11. H.4. fo.41. H.21. H.7. fol.7. & 27. li. Ass. pa. 50. And note ỹ if ỹ kings title appere any way of record, it is as good as if it were found by office. Therefore if the kings tenãt aliẽ wout licẽce, which alienatiõ appeareth by fine or other matter of record, in this case if there be another record foũd, ỹ pueth ỹ lãds to be holden of the king in capite, vpon these ij. records together proces shalbee made against ỹ party by *Scire fac.* to cõe & shew why he should not make a fine for ỹ alienatiõ 50. li. Ass. 2. Like law it is where there is a record to pue that he ỹ alieneth is but tenant in taile of ỹ kings gift, & he pretẽding to be tenãt in fee simple doth purchase a licence of alienation & alieneth & after dieth without issue, which death is foũd by office, but nothing of this state taile or licence appeareth in the saide office, yet vpon al these recordes laide together the king shall haue a *Scire fac.* against the alienee to shewe

why the lande should not be seised into his hands, & his highnes answered of ỹ profits since the death of the tenāt in taile, for when he was but tenaunt in taile it appeareth that the licence was purchased vpon a false suggestion, and so voyde, and then the landes ought to reuert to the kynge because hys reuersion could not be discontinued. And this may you see 40.li.ass.30. Then last of all it is to be seene whether the possession may be taken from the king by entrie or not. And as to that, if the kinges possession be by matter of record, no person can disseise him or take the possession from him, for like as the king cannot take by gift from any person but by matter of recorde, no more may the possession depart from him but by matter of record, and therefore hys highnes cānot haue assise or *Iectione firme siue custodie*, like as a common person may: but his highnes may haue a writte of rauishment of *Gard*, *vt patet*, *Gard* 3.M. 47.E.3. yea and though the entrie be not immediatly vpon him but vpon his committee or fermer, yet it is no disseisin to his highnes, as it appeareth an.4.H.7.1.M.2.H.4.7.M.14.E.4.fo.2. & *Suggestion* 9.M.35.H.6. By the which said booke of 35. it also appeareth that if the kinge or his committee be cast out of the wardship of the landes, ỹ the remedy is in this maner that is to say, vpon a suggestion thereof made in the chauncery, there shalbe awarded a writ called *Amoueas manum*, & that vppon a certeine paine, which writte may bee awarded onely vpon hys suggestion without any presentment or inquiry, and thys writte may be graunted to the committee as well before possession had of the ward as after, for when the king was once possessed by office, & grauntes it ouer, yet this possession still remaines, for the king abideth still gardein notwithstanding any such grant: And therefore this writ of *Amoueas* lieth for ỹ grātee or cōmittee, although ỹ grant be *absq; aliquo indereddendo*. And if vpon this writte of *Amoueas* the defen-

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daunt doe not restore the thing, then shall goe out against him an attachmēt, vpō which writ the defēdāt may appeare and shewe his title, which if it be found against him he shall then make restitution by iudgement and pay a fine, and aūswere ẏ meane issues and profits. Thus doth it appere that the king cannot bee disseised or erected if hys highnesse bee once seysed by matter of record. Otherwise it is beefore hys seysin bee by matter of recorde, for if beefore office a straunger enter by tytle or without title, this is no intrusion vppon the kinges possession, but in this case the heire may haue *Assise de mort daunceſter* against the straunger if he will, which proues that by his entry he hath gotten both a freeholde and a fee simple. But as soone as the office is founde and the escheatour entreth, thys possession of the straunger which entred without tytle is cleerely vndoone, & ẏ freeholde and the fee simple reuested in the heire, But if the entrie of the straunger were by tytle and afterward office is found and the kynge seyseth, whether then it bee so or no learne. And it shoulde seeme to bee all one, or els the kynges seisure is not good, for howe can the kynge seise in an other bodyes right yf the ryght were taken away beefore by an entrie? therefore it should seeme eyther his highnesse hath no title in that case to seise or else by hys seysure the freeholde and the fee simple must reuest in the heire. But note that if the kynge will by colour of a recorde seyse an other mannes lande, which recorde geeues hym no tytle in deede, notwythstanding any such seisure, yet he that hath right may enter vpon the king, and by his entre reuestes againe in him selfe both the free holde and fee simple, as where it is founde the kinges tenaunt dyed seised but of an estate for terme of life the reuersion to an other and thys notwithstandynge the kynge seyseth, in thys case if he in the reuerſ-

on enter vpon the king, this is a good entrie: and therfore the case was, he made a feoffement after his entrie, and it was thought to be a good feoffement. Like law is it where the king is intitled but onely to the profits as vpon an vtlagary in a personal accion or vpon the conuiccion of a clerke, in these cases if the partye enter and make a feoffement, or if a straunger that hath title to entre doo entre, hee dischargeth the kynge of his interest, and of these matters, you shall fynde bookes Y.8. H.4. folio.16. H.21. E.3. folio.1. H.3. H.7. folio.2. H.10. E.3. fol.2.27. All. P.50. T.9. H.6. folio.2. & H.21. H.7. fol.7.

Enterpleder. Cap.xix.

SOmetyme it happeneth that by two seuerall Offices founde in one countie, seuerall persons bee seuerally found heires to one man, whereby for asmuch as the king is brought in doubt to which of them his highnes may make liuery, they therfore must first enterplede, and when by enterpleder ỹ priuitie of the blood is tried betweene thẽ, thẽ his highnes ought to make ỹ liuery to him ỹ is tried to be the next heire of him that died. As for an example, by one *Diem clausit*, or special commission in one county, one is foũd heire to him that died the kyngs tenaunt & of ful age and by an other *Diem clausit* or special commission in the sãe countie one other is founde heire also to him that dyed and within age, in this case the heire that was first found shall haue a *Scire facias* in the Chauncery agaynste hym or her that was last founde heyre to come and shewe why liuery should not bee made vnto him of the lande comprised

in

in the *scire facias* as heire to him that last dyed seised therof, vppon whiche writ if a *Scire feci* bee returned, and the partie defendant commeth not, or if he come & confesse that hee him selfe is not heire, then the plaintif in the *Scire facias* shal haue his liuere, but if he come and entitle him by the second office, and trauerse the first as he needes must, (for thē-terpleder must needes rest vpon the first office, and not vpon the second) then as thissue is found, so shal hee or they for whom it is found, haue liuery. And this appereth in the new *Natura bre.* fo. 262. & Pl. 16. E. 4. fo. 4. *Trauers* 44. Pl. 36. E. 3. Howbeit a great doubte ryseth in our bokes vpon this matter whether the enterpleder shalbee forthwith after the second office founde, or not, vntyll such tyme as the heyre that ys founde within age commeth to his age, and as it appeareth by ỹ said booke of 36. E. 3. in this case, where one was first found of full age and after the other within age thenterpleder was forthwith, for it were no reason that hee that was right heire and of full age should be delayed by the nonage of the other that is no heire. And a straunger shalbe receaued to trauerse the office, notwithstanding the heyre that is found by the office that is trauersed be within age. And then it is no reason that the heire in this case bee in worse condition then a straunger. But take it by the fyrst office one is found heire and within age, and by the second office an other is founde heire, and of full age, whether in this case they shall enterplede or not, or whether thenterpleder shalbee before thage of the other: And surely it shoulde seeme by the groundes and rules declared beefore vppon the writ of *diem clausit extremum*, that the seconde office in thys laste case is voide, beecause there ys no better title found for the king than was by the fyrst, and then if it bee void, there can be no enterpleder. Howbeit in the new *Natura brevium* fo. 262. it appeareth to the contrary

hereof, and that they shall enterplede in this case, & that the seconde office is not void, for there the heires found by both offices were of full age. And yet that not wythstanding they enterpleded. And so is T.5.E.4.fo.4 where it is sayd that if by one office the heire is found within age, & by an other office another is found heire and of full age, that in this case they shall enterplede, but not before the child come to his full age. And *Townsend* Justice sayeth in P.1.H.7.f.14. That if by diuers offices it bee seuerally founde heires and within age, now the king shall kepe the landes till their full ages, and then they shall enterpleade, and if they dye beefore enterpleder their heires within age, seuerall *Deuenerunt* shalbe awarded, that is to say, for euery heire one, and by the sãe being found seuerally heires to their auncestors, they shall enterplede at their full ages like as their auncestors shoulde haue done if they had lyued, and if the dying of any of them were without issue & the other found to be his heire, then is thenterpleder determined. Thus may ye see how bookes vary in this matter, and yet by the way note this differẽce, that is to saye, where by the first office the heire is founde within age, and where of ful age, for by these books it should seeme that if hee bee first found within age, notwithstanding that by another office another is founde heire and of full age, yet hee shall not enterplede with the other tyll hee bee of age, contrary it is if the first bee found of full age and the next within age, and the reason may bee for that the kynge is first seised of him that is within age, with whom the law weyes more in presumption to be heire then with the other, and this title is the best title the kinge hath, for it entytleth his highnesse to a greater benefite then doth the second office, and this second office was found vppon a commission graunted more for the kynges benefit then for the heires that should be found by the same, and therfore it

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were reason that hee that is first found heire, haue more fauor if any fauor be to be shewed that he that was last found heire, or at the least for the kinges benefite that ỳ matter bee respited till the childe be of age.

Also the said Justice *Townsend* said further, P.1.H.7.f.14 that if one be found heire in one countie & another found heire in another countie, yet they shall enterplede, which cannot be as mee seemeth H.2.H.7.f.12. for once wee haue a generall ground that a man cannot sue a general liuery by parcelles but first he must cause an office to bee found in euery shere, where he hath lands, & when al the offices be returned, then to haue his liuery & not before, then in this case where one is found heire in one shere, and another in another shere, here none of them both can haue liuery, because he hath no office found but in one shere and not in the other: and then if there can bee no liuery there can be no enterpleder, wherefore yt should seeme in that case they cannot enterplede. And herewith agreeth ỳ booke in P.8.H.7. f.11. So no enterpleder cã be but where there is an office thorough the whole found for euery heire in euery county where the lands lye P.16. E. 4. fo.4. but it is not alway requisite that there bee seuerall offices foũd, for sometimes vpõ one office foũd by it selfe alone there may be an enterpleder, & that is where two bee found heirs by one enquest, as two twinnes, ỳ is to say, two children borne at a burden, T.1. H.7. 28. And it is to be noted that euery enterpleder is to trie the priuitie of bloud onely, that is to say, which of these that enterplede is next heire to him that last died seised, and not to trye their rightes in the lands. And therefore if by one office one be found heire of a generall tayle, and by another office another is found heire to the same lande as of estate in spetiall tayle, they shall not enterplede, as it appeareth in H.21.H.7.fol.36. Also they must bee both found heires to hym that last dyed, and by

whose death the king did seise: for if one bee found heire to him that died seised and another is found heire to the auncester that died seised next before the last dying seised, in this case they shal not enterpled, as it appeareth in H.2.H. 6.f.5. Also they shall not enterpled but where both heyres claime by one selfe title of landes holden of the king, for if the kinges tenant die seised of lands holden of other as wel as of the king, & one is found heire to all the lands, & by an other office another it is found heire only to the lands holden of other, in this case they shall not enterpled, as it appeareth in M.12.Ed.4.f.18. for he that is found heire by the second office cannot haue liuerie if thēterpleder were foūd for him, because hee is not found heire of all, as is before remembred. And therfore M.21.H.7.f.35. if one be found heire *virtute breuis*, & another is found heire *virtute officii*, in this case they shall not enterplede, because he that is found heire *virtute officii*, cannot haue liuere if thenterpleder did passe wō him: for the nature of ēterpleder is to haue liuery for him wō whom it is found. And note that notwithstāding an ēterpleder is not to trie the right in the lande but onely the priuitie of blood: yet the issue tried betweene thē shalbe an estopple afterward in an accion vsed of the possessiō of ẏ same aūcester by whom they claime, as in *Assise de mort daunceſter* or cosinage, as it appeareth in *Estoppell* 255. M. 4. E. 2: And note, that as two or more shal enterpleade ẏ claime as heirs euen so shall any other that clayme not as heyres but by some other title, if it bee so that theyr tytle affirme the kinges possession, as take the case to bee thys. Lande holden in chyefe is alienes to dyuers personnes at dyuers tymes, and this founde by office the kynge seyseth and after commeth euery of the alienees and prayeth to make hys fine and to be restored, now they shal first enterplede & trie which of their feffements ought to take place, er any of them getteth restitutiō, as apeareth in 43.li. Ass.p.20

So

So it is if any of them come into the chaũcery without pr̃o-ces & cõfeſſe thalienation, as it appeareth by the ſaid booke, for by the confeſſion the king is entitled againſt him that cõfeſſeth as wel as if it had bene found by office.

Trauers. Cap. xx.

TRauerſe for goodes was at the common lawe, but trauers for landes founde by inquiſition beefore the eſchetors is geeuen by the ſtatute made in the 34. yeare of E. 3. ca. 14. which ſaith in this wiſe. *Item acc. eſt que la ou terres ou tenements ſont ſeiſies en la maine le roy per office del eſchetor conteygnont que le tenaunt le roy ent fiſt alienation ſauns conge le roy, ou que le tenant le roy per ſeruice de chiualer moruſt ſeiſi des terres et tenementes auauntdits en ſon demeſne come de fee & ſon heire deins age, et puis la cauſe certifie en la chauncery & celuy qui terres ſount ſeiſie veigne en la chauncery & voet trauerſer loffice qui fuit primes priſe per mandement le roy, que les dites terres ne ſoient my ſeiſables ſoyt a ceo reſceu, & ſoit le proces maundes en banke le roy a trier & ouſter faire droit* This ſtatut extendes onely to the offices take *virtute breuis aut commiſſionis*, and not to the offices taken *virtute officii*. And alſo by thys ſtatute though the trauerſe were found for the party, yet might hee not haue had iudgement till a *procedendo ad iudicium* had ben awarded. And therfore was there another ſtatut made in the 36. yere of ỹ ſaid king the 13. cha. the tenor wherof is this, *Pur les greuouſes complaints queux le roy auer oye de ſon people de ſes eſchetors, et de lour male port, il voit & ordeigne del aſſent auauntdit, que terres ſeiſies en ſa maine, per cauſe de gard, ſoyẽt ſaluemẽt gards ſaũs waſte ou deſtruccion. Et que leſchetour neyt nul fee de boys, veneſon ne peſſoun, nauter ryens, mes reſpoigne au roy des iſſues et profites annuels proueignauntes des dits terres ſauns waſte, ou deſtruccion faire. Et ſil*

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face autrement et de ceo soit attaint, soit reint a la volunte le roy, & rende al heirs ses dammages au treble, a sa proper suit, si bien deins age come de pleine age, & eyent ses amies tanque il soit deins age la suit pur luy, respoignant al dit heire de ceo que serra issint recouere. Auxint dauters terres seisies in le maine le roy per enquest doffice prise deuaunt leschetour teigne mesme cest ordinaunce & penaunce deuers leschetours. Et sil eit null home qui mette challenge ou claime as terres issint seisies, qui leschetour maunde lenquest en la chauncellarye deins le moys apres les terres issint seisies. Et q̄ briefe luy soit liuere de certifier la cause de sa seisine en la Chaūcellarie, et illeoques soit oye sauns delaye de trauerser loffice ou autrement monstrer son droit & illoques maunde deuaunt le roy affaire fynall discussion sauns attender auter maundement. Et en cas que ascun veigne deuaunt le Chauncellor & monstre son droit per quel demonstraunce per bones euidences de son auncien droit & bone title que le chauncellor per sa bone discretion & aduise du counsaile (sil semble que il besoigne auoire counsayle) que il lesse & bayle les terres issint en debate al tenaunt rendaunt ent au roy le value si au roy appertient, en maner come il et les auters Chauncellers, deuaunt luy ount faites auaunt ses heures de lours bones discretions, issint que il face suertie que il ne serra waste ne distruccion, tanque il soit aiudge. Et que les dits eschetours preignent tiels enquestes en les bones villes & per bones gentes & de ceo ouerment, et per endētures, affaires enter les dits eschetours & ceux des enquestes come auter foits estoit ordeigne per estatutes. Anno 24.E.3. Et si null eschetour face ou contrary de cest ordinaunce suisdit eit la prison des ỹ. ans, & ouster ceo soit reint a le volunte le roy. By the common lawe before the makinge of these statutes a man had no other remedy to auoide a false office but onely hys petition. Howbeit in T.24.E.3.fo.54. *Wilby* sayeth that if thoffyce had bene founde before commissioners or any other then theschetour, the party should haue hys trauerse by thorder of the common law. Peraduēture he may be moued so to say

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becauſe thoſe ſtatutes geue a trauerſe onely to offices found beſore theſchetors, making no mencion of any offices found beſore any commiſſioners. Alſo beſore theſe ſtatuts if after liuerie or *Ouſter le maine* ſued, there had beene a new office found whereby the king had bene entitled to reſeiſe, & thereupon a *Scire fac.* according to the ſtatut of Lincolne againſt the partie that had purſued the liuerie or *Ouſter le maine*, to come & ſhew why the land ſhould not be reſeiſed, the partie in the *Scire fac.* might haue trauerſed the office that was ſo newly found, as I ſhall more plainly declare when I come to the place C. 26. fo. 80. Alſo *Bab.* ſaid in the Eſchequer chãber beſore al the Juſtices, *Trauerſe* 47. An. 8. H. 5. that theſe ſtatuts that geue trauerſe are only to be vnderſtand where the king is entitled to the land but for a time, as for wardſhip, alienation without licence, & ſuch like. But if his highnes be entitled to the fee ſimple or ỹ freehold, there he that is put out by the office ſhal not haue his trauerſe, but is put to his petition. *Tamen quære*, for though the firſt ſtatut be thus as *Bab.* hath ſaid, yet the ſecond is not, but general, & therefore may be extended to al offices what matter ſoeuer they cõtaine, as appeareth *Trauerſe* 37. H. 19. E. 2. where it is foũd that one had encroched vpon the kings demeanes, whych office in deede was falſe, for that the thing ſuppoſed to bee encroched was parcel of his manour ỹ was ſo preſented, & no part of the kings demeanes. In this caſe the partie being put out of the parcel of groũd by theſchetor was receiued to trauerſe thoffice, & yet thoffice entitled the king to the fee ſimple. Alſo theſe ſtatuts ſeeme not to geue trauerſe, but to him that is put out of poſſeſſion by the office. But the ſtatut of 8. H. 6. ca. 16. alloweth any trauerſe proſected by him that feeleth him ſelfe greeued by any ſuch enqueſt, although hee bee not put out of poſſeſſion by theſchetor. And the Statut ſeemes alſo to allow trauerſe of an office taken aſwell beſore commiſſioners, as beſore the eſchetor. Holwbeit ỹ ſtatut geueth no trauerſe, but only maketh thereof a reherſal.

Theſe

These statutes that geeue the trauerse seeme to offer it generally to any man that wil desire it or ỹ doth put challēge or claime to the landes whereof he is put out by any office. Howbeit the exposicion hath bene otherwise, that is to say, that his challenge or claime must be such as the law wil admit & allow, for euery man cannot trauerse that would, or that maketh his challenge or claime: for these statuts are intended where the king is entitled by office onely, for if his highnes be entitled by another record beside ỹ office, & entitled as it were by a double matter of record, the party shal neuer haue his trauerse. As take the case to be this, a man is attainted of treasō by act of parliamēt or otherwise by verdict, & afterward it is found by office that the said person attainted was seised day of the treason committed of certaine lands, which in deede were neuer his lāds, but mine, in this case if I be put out of my lād by this office, I cānot trauerse it: *causa qua supra*, & yet I am a stranger to this record, as appeareth in 40. Ass. 24. Ỹ. 49. E. 3. 11. Ỹ. 10. Ỹ. 6. 15. Ỹ. 4. E. 4. 2 & 2. T. 14. E. 4. f. 7. But if there be no such record of attainder I shalbe receiued wel ynough to trauers the office aledging first to enure me to a trauerse, that there is no such record of attainder, as appeareth in Ỹ. 4. Ỹ. 7. fol. 7. Also hee that is found heire by office shall not trauerse the same office that so findeth him heire (if that part of the office that concernes the tenure in chiefe be true) although the rest of the office be false: & therfore if the kings tenant dye seysed his heire being of full age, & by a false office the heire is foūd within age, in this case he cannot trauerse this office, as it appeareth T. 5. E. 4. 3 And the reason of it is because the heire cannot falsifie the office that he himselfe is to affirme by his liuery when hee shall sue it. For though hee would cause another office to bee found, according to the trouth of the matter, yet it were not to the purpose to helpe hym, for the best Office shalbee taken euermore for the King. That is to say, that that geeues hys highnesse

most

moſt auauntage, & the heire driuen to ſue his liuery vpon ỹ office onely, for ſeing the king is bound by an office as well as is the heire, it is reaſon if any be better for him than other, that he be bound to that onely, & not to the other, & the lawe preſumes the one office to be as true as thother, vntill ſuch time a triall therof be made, which triall cannot be by ỹ heire for hee is bound as I ſayd before, by the office that is found without any further choiſe hauing no prerogatiue in ſuch matters, and if he ſhould bee receaued to his trauerſe in this caſe, then vpon the trauerſe found for hym, hee ſhoulde haue the lands out of the kinges hands by an *Ouſter le maine* without any liuery ſuing, as lands that the king ought not to haue ſeyſed, which were inconuenīēt. For euery way the king ought to haue ſeiſed thoſe lands againſt any that claimeth to be heire vntill ſuch time as liuere be ſued thereof, Lyke law is it where the kinges tenaunt dieth ſeiſed of land in diuers counties his heire being of ful age, & in one county the ſame heire is founde within age, & in another county he is founden of full age, in this caſe ỹ heire ſhall not trauerſe the office ỹ found him within age *Cauſa qua ſupra:* for thē for the landes in one county he ſhould haue thē out of the kings hands wōut any office or liuery ſuing. And this caſe appeareth in *Trauers* 39. H. 32. H. 6. But if an office find ỹ my father held his lāds of ỹ king in chiefe by knights ſeruice where in dede he held not of him in chief, in this caſe I ſhalbe receiued to trauerſe this office. For if I ſhould ſue my liuery vpō the ſāe, I ſhould be cōcluded euermore after to ſay, but ỹ ỹ lāds were holdē in chiefe of ỹ king, & for ỹ cauſe I ſhalbe receiued to my trauers as euery ſtrāger ſhalbe in ỹ like caſe: for if my trauers be true thē cā ỹ king haue no cauſe to ſeiſe thoſe lāds & therfore not like ỹ caſes before remēbred, as appeareth H. 1. H. 7. fo. 3. & 28. The wordes of the ſtatutes be that he whoſe lāds be ſeiſed ſhal trauerſe, or he ỹ putteth challēge or claime to the lande ſo ſeiſed. Theſe woordes bee not ſo generallye vnder-

vnderstand as they bee spoken, for most men vnderstand them that hee that will challeng or claime but a terme of yeares onely, shal not be receiued to his trauerse where the king is entitled to the free hold by thoffice, as where it ys found that the kinges tenaunt is seised of certein landes and is dead without heire wherby the landes ought to eschete to the king, commeth one & saieth that he is tenaunt for terme of yeares of these landes of the demise of a straunger, without that that he that is supposed to be the kynges tenaunt was euer seised of these lands, this trauerse lyeth not in hys mouth: for hee that hath but a chattell shall not bee receiued in any case to falsifie the record that geueth any man interest in the freehold although he be a straunger to that record. Contrary lawe is it of him that hath a free hold or inheritaunce in the land, for they shall trauerse the record in such case. Like law is it where the kinge is entitled but to the wardshippe of the heire of hys tenaunt, he that is former of the demise of a straunger shall not trauerse his office although the king be not entitled thereby to any frecholde, for it was not the mind of the makers of these statutes to help them that claime but chatels which are accompted in lawe as nothing, because they perishe and abide not. *Et de minimis non curat lex.* Howebeit learne what ỹ lawe will in these cases, for I haue seene no books of them. The lord in title of wardship shall trauerse the office, and yet hee claimeth but a terme of yeares in the land, as where it is found by office that such a one held landes of the king in chiefe and died his heire within age, where in deede he holdeth no such land of the king but onely of me by knightes seruice, in this case, I that am lorde shall trauerse this office, that is to saye, shewe howe they bee holden of mee by knyghtes seruice, without that they be holden of the kyng, as appeareth in M. 1. H. 7. 3. For there it toucheth the lordes inheritance in the right of hys

his ſeignozie, & becauſe he by the falſe office is to loſe ý pzo-fite that is pzeſently fallen by reaſon of his ſeignozie, it is reaſon he be receiued to trauerſe the office. But if hee were but Lozd in ſocage he ſhould not be receiued to his trauerſe becauſe he thereby can make no title to the wardſhip of the body, and landes of the child, foz it is a good general groũd if the king be once ſeiſed, his highnes ſhall retaine againſt all other that haue no title, notwithſtanding it bee found alſo that the king had no title but that the other had poſſeſ-ſion befoze him, as appeareth in 37. li. Aſſ. Pl. 11. where it was found that neither the king noz the partie had title, and yet adiudged that the king ſhould retaine, foz thoffice that findes the king to haue a right oz title to entre, makes euer the kinge a good title although it bee falſe, and hys highneſſe thereby may take poſſeſſion againſt any other that is ſeiſed of the landes and retayne vntill ſuch tyme as thoffice bee trauerſed by hym that hath title and tried to be a falſe office. And therefoze no man ſhall trauerſe thoffice vnleſſe he make him ſelfe a title. And if hee cannot pzoue his title to bee true, although hee bee able to pzoue his tra-uerſe to be true, yet this trauerſe wil not ſerue hym. As foz an example, it is found the kinges tenant died ſeiſed of cer-taine lands that he held of the king in chiefe, his heire bee-ing within age, where in deede he had made a feoffement in his life time to another of thoſe lands, it is no trauerſe foz the feoffee to ſay he died not ſeiſed, but he muſt firſt make him ſelfe a title by the feoffement: and foz aſmuch as it is found that the lands are holden in chiefe, if he wil make his title good againſt the king, he muſt ſhew fourth a licence of alienation oz a diſpenſation thereof, oz els he muſt trauerſe the tenure in chiefe, as well as he ſhal do the reſt of thoffice, otherwiſe his title is not good, as appeareth in Pl. 36. E. 3. *Trauerſe*. 44. & 46. *Liuery* 18. Pl. 36. E. 3. fo. 4. Pl. 3. H. 4. 14. & Pl. 3. H. 7. fo. 14. holwbeit *Huſſey* holdeth opinio T. 1. H. 7. 28. ý no mã

may tra-

trauerse the tenure, but the lord or the heire, vnles his title be found by office, but whether the law be so or not, learne, for as I take it the lord and euery stranger that hath a title against the king, making his title shall trauerse the office before his title bee found by office: for when the trauerse is found for the partie, his title now appeareth of record, & by the trauerse found, the office which was the kinges title is vtterly destroied and gone, so that now the king is not to make any liuerie of the landes to any person, but onely to amoue his handes from the same, with the meane issues & profits as one that had no cause to seise them. And therfore euery man may enter now that will if he haue right or title of entrie to the lands. for the king deliuereth them to no person certaine, but onely ridges his owne hands of thē as he ỳ had neuer seised them, but otherwise it is where ỳ king is to make liuerie, for there his highnes must bee enformed certainly by matter of record who shalbe his tenant, & who it is that ought to receiue the liuerie at his hands, least his highnesse be decryed in thadmitting of his tenaunt which is and ought to bee a great matter toward the lord, & therefore the cases be not like, wherefore I think a man may trauerse by force of the statuts without hauing their title first found by office: and so be our bookes Ꝑ.36.E.3. *Trauerse.44.* Ꝑ.12.E.4.fo.18.Ꝑ.16.E.4.fo.4.& 43.li.Ass.Ꝑ.20. Holwbeit *Trauerse 45.* T.5.E.4.f.5. seemes to way to the cõtrarie here of, & Ꝑ.12.Ꝟ.6. also, where it is said ỳ if it be found ỳ ỳ kings tenant died seised, where in deede he was ioyntly enfeoffed with me, now cã I not trauerse this office except another office were foũd for me. But cõtrary law should it be, if I had ben found by the office iointenant wō him for terme of life, where in deed I was iointenant with him in fee simple, in this case I may trauerse thoffice, because mencion is made of me in the said office, this booke case admitted to be law, yet it varieth from the case before remēbred of the stranger

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that trauerſed thoffice, for here thoffice is true, and whē it is found by office that he died ſeiſed, this may bee although the ſaid dyeng ſeiſed were iointly with an other, for any thinge that is expreſſely found to the contrary, and then the kinge here is to admit an other tenant, as in the caſe of the liuery before whom as yet hee hath no credible information, that is to ſay, by matter of record, and then it is like to the caſes of tenant by the curteſie, tenaunt in dower, and the deuiſee which in no wiſe can be admitted to their eſtates vnles mēciō be made of them in the office or ſome other office or matter of record found for them, as appeareth in ℙ.9.℣.7.f.24 *Brieſe* 618. ℙ.46.℈.3.℈ ℳ.11.℣.8. *Deuaunt.* fo.17. and for none other reaſon as I gather it, but onely for that thoffice is true ℈ they are to be admitted ẏ kinges tenauntes, which cannot be but by information by matter of record, *Vt ſupra.* Thē let vs reſort to the place we were at before: that is to ſay, no man may trauerſe with the king, vnles he make hym ſelfe a good perfect title, as to ſay ẏ the tenant which is ſuppoſed to die ſeiſed did infeffe him, or ẏ a ſtrāger was ſeiſed ℈ did infeffe him, without ỹ, ẏ he died ſeiſed. And ſo note by ẏ wale ẏ he may conuey his title as well frō a ſtrāger, as from him ẏ is ſuppoſed to die ẏ kings tenant, as appeareth in ℙ.36.℈. 3. *Trauers* 44.℈ whē he hath made thus his title, thē hee muſt trauerſe ẏ kings title, which is thoffice, for it is not enough for him to reſt vpon his owne title although it bee neuer ſo ſtrōg, wōut aūſwering ẏ kinges title, yet although it were good againſt a comō perſō, yet againſt ẏ king it is not ſo wōut trauerſing ẏ office. And therefore if he wil ſaie ẏ his tenāt in his life time did leuy a fine vnto him of theſe lāds, *Sur conuſaūce de droit, come ceo quil ad deſō done,* by vertue whereof he was ſeiſed, vntil ſuch time as he was put out by this office, ℈ prayeth reſtitutiō, this is no plee againſt ẏ king, ℈ yet this matter were a good plee in *Aſſiſe of mordaunc.* brought by ẏ heire,

for in that caſe he ſhoulde bee eſtopped by thys fine, which is executed to ſay the contrary therof, ỳ is to ſay, ỳ his father died ſeiſed without ſhewinge how hys father got the poſſeſſion againe ſince the tyme of the fine leuied. But it is no plee againſte the kinge, for the king cannot be eſtopped, namely in this caſe, being a ſtraunger to the recorde. And alſo the ſtatut geues a trauerſe, and by this maner of pleading he taketh no trauerſe. Like lawe is it, if it be found by office, ỳ the kinges tenaunt in chiefe infeffed one B. without licence, comes one D. and ſaith, ỳ her dyed ſeiſed, and his heire entred and enfeffed him by the kinges licence, this is no plee without trauerſing the feoffement made to B. and yet againſt any common perſon it were a good plee, but not againſt the king, for his title muſt be aunſwered fully: and that is the feffement, and theſe caſes appeare in *Trauers*. 17. H. 46. E. 3. fo. 43. li. all. H. 20. Alſo it is not ſufficient to trauerſe one of ỳ kinges titles, but he muſt trauerſe them all, for though the kinges title that he is ſeyſed by, be found not good, yet if there bee any other recorde ỳ makes the kynge a title whereby he may retayne the lands, the party muſt auoid alſo ỳ title, or els he gettes no *Ouſter le maine*. H. 9. H. 4. f. 7. but learne if there be no ſuch record in *Eſſe*, or beinge at the time of the trauerſe tended, and hanging the plee vpon ỳ trauerſe a newe record, that is to ſay, an office is founde which entitleth ỳ king, whether in this caſe ỳ party ſhal be driuen to trauerſe this office or not, ere he haue his *Ouſter le maine*. And it ſeemeth he ſhall not: for ſo he might bee delayed of hys poſſeſſion infinitely by finding one office after an other, wherefore this office foũd, hanging ỳ trauerſe ſhalbe accompted in law as though it had bene found after ỳ party had had his *Ouſter le maine*, in which caſe then ỳ party vpon ỳ firſt trauerſe found for him, ſhal be reſtored to his poſſeſſion by an *Ouſter le maine*, & then after vpon a *ſcire fac.* ſued againſt him

him to ſhewe why theſe landes ſhould not be reſeiſed, vpon this newe office found for the kinge, he ſhalbee receiued in that *Scire facias* to trauerſe this newe office. Howe be it thys auauntage he winnes hereby, that is to ſay, hee then trauerſeth with the king, keeping ſtil his poſſeſſion, where els hee ſhould trauerſe being ſtil out of poſſeſſion. And this caſe ys may find T.11.H.4.f.80.& M.13.H.4.f.8. Thus may ye ſee when a man trauerſeth with the king, he muſt trauerſe all the kinges titles that haue then their being by matter of record, & is not bounden any further to anſwer for that time, Then let vs ſee how the kinge ſhall reply vnto this trauerſe: and in that it is to be noted, ý the king hath a prerogatiue ý a comon perſon hath not, for hys highnes may chooſe whether he will maintaine the office, or trauerſe the title of the party, and ſo take trauerſe vpon trauerſe, or when all his titles be trauerſed, his highneſſe may chooſe to maintein them all, or els but one of them P.13.E.4.fol.8. But then note, that if he mainteine but one, that is to ſay, take iſſue but vppon one which is found with him that tendeth the trauerſe, In this caſe the party ſhall haue hys *Ouſter le maine*, notwithſtanding there be no iſſues taken vppon the other title, H. 4. H.7.f.5. but whether the kinge ſhall euer take auauntage of thother titles after or not, this is to be ſeene: & I thinke he ſhoulde, for though the other titles ſhall not in this caſe let ý party of his *Ouſter le maine*, yet it ſeemes the king may call ý party againe by a *Scire facias* to anſwer his other titles, or els his highnes to reſeiſe, as I ſaid before, for no *Nient dedire* cã prejudice ý king, *Nec tacita renunciatio*, like as it may doo a cõmon perſon. And therfore ſeing he did not renounce his other titles opẽly nor expreſſely, it ſeemeth his highneſſe by his prerogatiue ſhal haue aduauntage of them at any other time, when it ſhal be his pleaſure. And theſe caſes ye may ſee M.9.H.4.fol.6. Howe be it it appereth in the

ſaid booke of P.13.E.4.fo.8. that after the kinge ioyneth an iſſue vpon a trauerſe, his highnes cannot in any other terme waiue this iſſue and take a newe, for ſo the party might be delayed infinitely of his right, which ſhould bee as it were a wrong committed vnto the party, & the king by this prerogatiue may do no man wrong: but after iſſue ioyned hee maie demurre in lawe, and waiue the iſſue, for there is no matter chaunged, but the olde remaineth. P.3.E.4.fo.26. And by the demurrer the lawe preſumeth that the iſſue was ioyned, & ſo might bee a Jeofaile, and therefore his highneſſe may demurre in lawe after iſſue, but not chãge his iſſue, & take a newe. And note that if the party take a trauers which is iudged inſufficient in the lawe, this is peremptory vnto him, and hee ſhal not be receiued after to take a newe, as appeareth in 40. aſſiſe. 24. Yolwe bee it T.14.Ed.4. the contrary oppiniõ is holdẽ, & that it is not peremptory, becauſe it proceedeth in the Chauncery, which is the Court of Conſcience. But as to that a man may aunſwere and ſay, that a Chauncellour hath two powers, the one abſolute, the other ordinary, and this trauers is before him by an ordinary power, in which caſe al thinges touching the ſame muſt procede as it ſhould before any other ordinary Judge of the cõmon lawe, and therefore it ſhould appeare by a booke in H.4.H.6.f.2.& H.11.H.4.f.25.P.22.E.4.f.9.*Trauers* 12.H.3.H.7. that if the party be nonſuit in this trauerſe, it is peremptory vnto hym, for ſo might he delay the kinge infinitely, *tamen quære*: & learne whether one may proceede with a trauerſe the heire being within age, or els ſhall tarry till he be of full age, for the booke is in T.5.E.4.f.5. that he ſhall tarry tyll the heire commeth to age. But in this queſtiõ one may make this diſtinction, that is to ſay: Whether the trauerſe be tendred by a ſtraunger, or by the heire (for ſometymes it happeneth, that the heire ſhall trauerſe as well as a ſtraunger.)

For no more then a straunger can haue *Ouster le maine* with out trauersing al the kinges titles, no more may the heyre haue liuery without trauersing al his titles, and then if the trauerse be to bee taken by the heire, he shall not bee thereunto admitted, vntill he be of age, because that beefore that time he hath no cause to haue his liuery. But that reason serues not where the trauerse is to be taken by a straunger, & therefore it should seeme that he should haue it by and by: For he hath cause to haue an *Ouster le maine* forthwith, and that with the meane issues and profits, and therefore it were no reason that the nonage of a thirde person shoulde hinder him, with whome he is not to pleade, or to trye any right But onely with the kynge. For if the child haue right, he may enter vpon the straũger after he hath his *Ouster le maine* and trye hys right with him: and so at no mischiefe. And note as I sayed beefore, that the heire must trauerse all the kynges titles ere he can haue liuery, and that whether the kynges title bee in his owne right, or in ỹ right of an other in hys owne right, as if there be a recorde that prooues hys lande to bee aliened without the Kynges licence, or that thauncester of the enfaunt that woulde sue hys liuery, was but tenaunt for terme of life, the reuersion to the king and hath made a feffement to the Kynges disheritaunce, or such lyke, in these cases notwithstanding the kyng did not seise by vertue of these recordes, but onely by vertue of the office, which found thauncester of the infant dyed seysed, the kinges tenaunt in chiefe of estate in fee simple, yet the heire getteth no generall liuery vppon ỹ office, vntyll such time as he hath auoyded these other recordes. And if he haue it beefore, it is a cause of reseisure. So is it where the Kinges title is in right of any other, as if one be found heire by office, & after by an other office an other is founde heire

of the ſame landes to the ſelfe ſame auncеſtor, in this caſe he that was firſt found heire cannot haue his generall lyuery, vntill ſuch time as hee hath deſtroyed the other title either by an enterpleder, or a trauerſe, for if it ſo come to paſſe that he cannot enterplede, then muſt hee trauerſe, or by ſome other meanes auoyd the recorde ere hee can haue hys ſayd generall liuery, as if he ſue his generall liuery otherwiſe, yt is then miſſued, and a good cauſe geeuen to the kinge to reſeiſe. And this enterpleder or trauerſe betweene them that claime as heires, is by the order of the common lawe, and not by ſtatut, and can neuer be, but where both theyr titles be found firſt by office, and the reaſon is, becauſe that aſ ſoone as the matter is diſcuſſed betweene them, hee for whome it is found ſhall forthwith haue his generall liuery, which he can neuer haue, if his title bee not firſt founde by office: and therfore not like the caſe where a ſtraunger trauerſeth with the king, that is, to haue but an *Ouſter le maine* for there the king had no right to ſeiſe, and therfore his title neede not to be found by office, as I haue ſaid before. But in the other caſe whoſoeuer ſhal claime the lande as heire, his highnes hath right to ſeiſe in ỹ right of the ſaid heire and to haue his primer ſeiſine or wardſhip as the caſe doth require. And therefore his title muſt bee firſt founde by office: but where one heire is to trauerſe with an other heire duryng the kinges poſſeſſion, this ſhall not be, vntill he that is firſt found heire by the office come of age, becauſe vntill ỹ tyme the landes ought to remaine in the kinges handes and then he to haue liuery: but whether he that was firſt found heire ſhould tarry for thage of him that was laſt foũd heire, I haue ſaid my mynde therein before in the title of enterpleder ca. 19. But where a ſtraunger is to trauerſe, hee ſhall not tarry for the age of the heire for the cauſes beefore remembred.

And

And ſo there appeareth to be a great difference betwene a trauerſe taken by him that is a ſtraunger, and by him that is heire. But at this day moſt liueries that be ſued, are ſpeciall liueries, which containe in them ſelues a pardon, and therefore the miſſuing of them is diſpenſed with all by the wordes of the pardon cõtained in the ſaid liuery. And ſo many of theſe thinges that I haue ſpoken of beefore are not much to be obſerued, if the liuery, or *Ouſter le maine* bee not generall. (For I ſee no lett, but that an *Ouſter le maine* may bee graunted ſpecially, as well as liuery) And laſt of all it is to be noted, that this trauerſe extendes not to euery record that entitleth the king, but onely to ſuch records as be trauerſable, as an office, or ſuch like, as I ſhall ſhewe my mind therein more fully in the chapiter of Petition. Other trauerſes there be which bee trauerſes by order of the common lawe. And not by any ſtatut, as trauerſes vpon endictments, or preſentmentes, whereof I intend not to intreate in this place, amonge which trauerſes there is alſo by order of the common lawe a trauerſe concerning goodes and cattelles of perſons attaynted, for the which a man ſhal trauerſe with the king, although his title thereunto bee by double matter of record. As take the caſe to bee, a man is attainted of treaſon or felony, or outlawed in a perſonall action, and after by office it is found that hee was poſſeſſed of a horſe or any other goodes as his owne proper cattell, where in deede they bee the goodes of a ſtraunger, in this caſe the ſayed ſtraunger ſhall trauerſe thys office wyth the kynge Ÿ. 4. E. 4. folio 24. Ÿ. 13. E. 3. fol. 8. & Ÿ. 47. E. 3. fol. 26. So is it, if it bee founde by office, that a man outlawed in a perſonall action, is ſeiſed of certaine lãds, which in deede are my landes, and the eſcheto by force of that falſe office takes ỳ profits: In this caſe I may diſturbe him

without trauersing thoffice. And this case appeareth T.9. H.6.fo.20. Then further. The wordes of the said statutes of anno.36.hee, that if any come beefore the Chauncellor and shewe his right, whereby it may appeare by good euidēce that he hath an auncient right and good title, then the Chaūceller shall lett the said landes to the party that tendeth the trauerse, yelding to the king the value, if it bee adiudged for the king in maner as he and the other Chaūcellour haue donne beefore him by their good discretions, so that hee to whō it shal be letten, finde suerty to do no waste or destruction before the trauerse be discussed. By the wordes of thys statute it should appeare that the chauncelours beefore thys tyme by their discretions had vsed to let the lands to the party to ferme, and that is true, for the kinge vsed so to doe vpon a petition which was made to his highnesse by the order of the common lawe in steede of a trauerse nowe vsed, as appeareth H.5. E.3.fo.6. and therfore I thinke his highnesse may doe so at this day both vpon a petition, & a *Monstraunce de droit*, although the statute make no mencion therof, for so it was vsed to doo by order of the common law, as it appereth by ỹ booke before. And of this matter see *Trauerse* 12. H.3. H.7. Now is this statut amplified and made plainer in thys poynte by the Statute made in the 8. yeare of H. 6. ỹ 16. chapter, which wil ỹ no lāds or tenemēts seised into ỹ kinges hands vpon enquest taken beefore Escheators or Cōmissioners bee in any wise graunted or letten to ferme by the Chauncellor or Treasorer of Englande, or any other the kinges officers, till the said enquestes or verdicts be returned fully into the Chauncery or Eschequer, but all that time shall abide in the kynges handes, and by a monethe after the said retorne, if it be not so, that he or they that feele them selues greeued by the sayd enquest, or that are put out

of their

of their landes and tenements, come into the Chauncery & offer to trauerſe the ſaid enqueſtes, and to take the ſaid landes or tenements to ferme, which if they doo, then the ſaid Chaunceller, Treaſorer, and other officer ſhal let them haue them to ferme, ſhewing good euidence, prouing their trauerſe to bee true according to the forme of the ſtatute of anno 36. Ed. 3. to hold till the iſſue vppon the ſaid trauerſe taken, be found and diſcuſſed for the king or els for the party, and alſo finding ſufficient ſuerty to purſue the ſaid Trauerſe with effect, and to render to the king the yearely value of the tenementes whereof the trauerſe ſhall bee ſo taken, if it bee diſcuſſed for the kinge. And if any letters patentes of any landes or tenements be made to any other perſon to the contrary, then the ſame to be voide after the moneth. Hereupon it is to be noted, that the ſhewing of the euidence is onely rehearſed to the letting of the lands to ferme, and not to the trauerſe. For by this ſtatute he may trauerſe without ſhewinge any euidence, but not haue the landes to ferme. Alſo by theſe Statutes hee is not bound to no certaine time for taking of his trauerſe, but onely for taking of ẏ lãds to ferme, for hee may tende his trauerſe whē he will, ſo he deſire not the ferme of the landes. But if hee will haue them to ferme, hee muſt tende his trauerſe within the moneth, as appeareth 27. Edward. 4. folio. 8. and nowe by the ſtatute of anno primo H. 8. chapter 16. he hath three monethes libertie to do it. Alſo note the thinges that hee muſt finde ſuerty for, that is to ſay, to ſue it with effecte, to pay the rent after the trauerſe be diſcuſſed, and to doo no waſt or deſtruction. In this word, Rent, is emplyed all the arrerages of the rent that ſhall incurre meane betweene the taking of the ferme, and the diſcuſſinge of the trauerſe, and yet it is not ſo expreſſed. Alſo the leaſe that is made to him

that

that tendes the trauerse is not of any terme certaine, but onely by these wordes, *Donec discussum fuerit*, for the words of the statute bee so, and therefore as soone as the trauerse is found against hym that tendeth it, by and by the lease he had in the landes by force of the statute, is voyde, without any further proces, as appeareth in H.4. Edwarde the 4. folio. 29. Howe be it for as much as the wordes be, to hold till the issue vppon the sayd trauerse taken bee founde and discussed for the Kynge, or for the party, I would learne if the party, bee nonsuit vppon his trauerse, or that the trauerse bee adiudged against him vppon a demurrer in lawe, whether the lease should be voide or not, like as it shall bee vppon the issue founde. And it seemes it shall bee by the woordes compriſed in the said statute of Anno 36. Edward 3. But not by any woordes compriſed in the said statute of anno 8. Hen. 6. For the woordes bee, *Tanque il soit adiudge*, and therewith agreeth the booke in H.4. H.6. folio. 12. Also note, that beefore thys statute of anno 8. H.6. the kyng dyd vse to graunt the custody both of the landes and body to any other to whom he would after office, and before any trauerse tended, and this graunte was good, beecause it was not then restrained by any statute. Howe beeit, vppon the trauerse tended, a *Scire facias* should haue bene awarded against the patentee, comprehending in the same all the trauerse. And if hee had bene returned warned, and came not, hys patent had bene voide *eo facto*, as appeareth in ỹ sayd booke of H.4. H.6. fol. 12. at leaſt wise for the landes, and yet there was then no estatut ỹ made them void, *quod nota*. And then by and by they should haue bene letten to ferme to him that had tended the trauerse. But now whether since ỹ making of the said statute of anno 8. Henry the 6. a *Scire facias* shall bee awarded against the patentee vppon a trauerse, learne,

for

for the ſaid ſtatut makes ſuch letters patentes void for the graunt of the lands, but not ſo for the bodie, and therefore it ſeemes a *Scire facias* ſhalbe ſtill awarded, and the grant alſo of the ſaid landes is not voide, till after the Moneth. And now by the ſaid Statut of anno 1. Henry the 8. not til after three monethes, and ſo it ſhould ſeeme by the booke of P.5.E.4.folio.3.M.14.E.4.fol.1.H.8.H. 6.folio.17.that a *Scire facias* ſhalbee awarded at this day notwithſtanding the ſtatut of 18. Henry 6.cap.6. which ordeines that al letters patentes made before the kinges title found by inquiſition returned into the Chauncery, or other matter of record ſhalbee voide. For that Statut alſo extendes but to landes and tenementes no more then the other Statutes doe, ſo that the graunt of the body, or of any other thynge which is no land or tenement, is good at thys day before any office or inquiſition thereof found. And it is further to bee noted, that this ſtatut of anno 18. Henry 6. makes not ſuch letters patentes good for any time which he graunted contrarie to the tenure of ỳ ſtatut, but they be voyd forthwith. And learne and enquire if at this day within one moneth, or three monethes after office found and returned to the maſter of the kinges wardes and liueries with aduiſe of one of the counſell of the kinges court of wardes and liueries, made a leaſe of the wardes lands, or of an ideots landes being in the kinges handes for the time of the kinges intereſt in the ſame, and after within the time appointed by the ſtatut comes a ſtraunger and trauerſeth the office, whether in this caſe he ſhal haue the landes to ferme or not. And it ſeemes that no, becauſe this ſtatut ỳ geeues that power to the maſter of the kinges wardes, was made longe time ſince the ſtatutes of anno 8, or 18. H.6. that is to ſay, in the 32. H.8.cap.40. which ſtatut is generall, and no ſauing or exception made of the other ſtatutes before.

And

And then it is a generall rule, *Quod posteriores leges priores contrarias abrobant*. And some thinkes at this day for wards landes, or Idiots landes, there shalbee no letting of them to ferme to him that tended the trauerse, if they were letten before the trauerse tẽded by the maister of the kings wards, but of other wardes it remaines as it was before the making of this Statut of Ann. 32. H. 8. And note, that if the king seise not for any wardship, but onely for primer seysine, because the heire is of full age, if a straunger in thys case will trauerse, it is to litle purpose. For if the king by and by after will make liuerie to the heire, the trauerse is become void, as appeareth T. 1. H. 7. f. 27. for the king in that case hath no cause to retaine the land, but to deliuer the same to him in whose right he seised, beeing able for it, and he that tended the trauerse is at no mischiefe, for hee may now after this liuerie pursue for hys remedie against the heire, and if it should tarry in the kinges handes for the trauerse sake, his highnesse should then haue all the profites if the trauerse were found with him for all the time that the said trauerse did depend, whereunto hys highnesse hath no right, but onely the heire, and therefore it seemes there shall bee no trauerse, but where the land is to abyde in the kinges handes for a certaine tyme, as for Wardshippe, fine for alienation, or such like. But if hee that tended the trauerse bee found heire by office, and is to haue liuerie of that land, as well as the other that was first found heire, otherwise it is, for the reason made before. And so of an enterpleder. For in that case the king is bound to make the liuerie to hym that is tried ryghtfull heyre, but not so in the case of a Trauerse tended by a straunger, whych claymes not as heyre, for hee is to haue no Liuery, but onelye an *Ouster le mayne*, by which *Ouster le mayne*, the king deliuereth nothing, but leaues his owne possession,

as

as one that hath no right to keepe the possession any longer And it appeareth sufficiently, that hee hadd no ryghte to keepe it, after the time the heire that should haue it was of full age. Wherefore a straunger in that case cannot trauerse, for so two that hadd no right, by trauersing together might kepe the third that hath right from his possessiō, which was neuer the meaninge of the makers of the said statutes. And notwithstanding that this booke T.1.H.7. f. 27. bee that after the trauerse, and beefore the ferme graunted the liuery was made, yet that makes no difference, for whether the ferme were graunted beefore the liuery, or after when the trauerse is become voide by the liuerye, the ferme which dependeth vpon the same is also voyd, as me seemeth. And note also that the said statute 1. H. 8. ca. 10. which geeues three monethes for hauinge the landes to ferme makes no mencion of the treasorer of England, but onely of the Chaunceller, so that for any thinge that is to bee letten by force of that statute, it must be done onely by the Chaunceller, and not by the treasorer: as it should seeme, as well of offices returned into the Exchequer, as into the Chauncery, and therefore within the moneth after an office returned into thexchequer, the Treasorer may let the landes to ferme to him that tendes the trauerse according to the said statute 8. H. 6. But if it bee to lette after the moneth, the Chaunceller of England must do it as it should seeme. And note also that by a statute made Anno 1. Hen. 8. cap. 12. Any person that sued his liuery in time of kinge H. 7. vppon any office that founde hee held in chiefe, where in deede hee held not in chiefe, which said offices were founde by the procurement of *Empson* and *Dudley* in the tyme of the said late kynge, may trauerse thoffice in like maner and forme as he might haue done beefore the liuery sued, if it be so that he be now seysed of the same lands, sauing that he shall

not

not bee restored to the meane issues & profits. This statute seemes not to extend to the parties heires that had iuery, but onely to the party himselfe. *Quære hoc*. And note that in the court where thoffice is first returned into, there I shall tend my trauerse: as if it be returned into the Chauncery, then in the Chauncery, & if in the eschequer, then in the eschequer, as in deede al offices *virtute officii* are returnable in ỹ eschequer onely, & such as be *Virtute breuis vel commissionis*, be returnable in ỹ chauncery. H.4. E.4. f.24. And now by ỹ statut of 33. H.8. ca.22. No escheto^r may sitt, *virtute officii* only to find any office of lãds holden of ỹ king of ỹ value of v. li, o^r aboue, vpõ paine to fo^rfeit v. li.

Monstraunce de droit. Cap. xxi.

The statut of anno 36. E.3. that geeueth a trauerse, saith in this wise: *Et sil eit nul hõe qui met challẽge ou claime as terres issint seisies que leschetor maund lenquest en la Chauncellary deins le moys apres les terres issint seisies, & que briefe luy soit liuere de certifier la cause de sa seisin en la Chauncellary, & illonques soit oye sauns delay de trauerser loffice ou autrement monstrer son droit, & illonques maunde deuaunt le roy affaire final discussion sans attender auter maũdemẽt.* This statut speakes both of trauerse and *Monstraunce de droit* distinctiuely, wherby a man may gather, that if *Monstraunce de droit* were not by the o^rder of the common lawe, as it is said H.9. E.4. f.52. & H.13. E.4. fol.8. that it is: yet were it geeuen by thys statut. And no booke that beares date befo^re this statut can I find that treats any thing of *Monstrãunce de droit*. Wherfo^re without

(without preiudice to any mannes opinion) mine opinion is, that it is geeuen only by this ſtatut: but whether it bee ſo, or not ſo, I do not greatly force. Let vs ſee what it is, & in what caſes it lieth. If the king bee entitled by office or other matter of record, that is trauerſable. Howbeit there is no cauſe of trauerſe, for that the office or record is true, in this caſe any man that hath right to the poſſeſſion of ỹ freehold of this land, which in ſhewing of his right is able to confeſſe this office, and auoid it, ſhalbee receiued (if he bee put out of his poſſeſſion, or greeued thereby) to come into the Chauncerie and ſhew his ſaid right, which beeing there proued to be true, iudgement ſhalbee geuen that the kinges handes be amoued from the poſſeſſion of the ſaid lands with the meane iſſues and profites to be reſtored vnto the partie that ſueth the ſaid *Monſtraunce de droit*. As for an example, It is found by office, that the kinges tenaunt by knightes ſeruice in chiefe died ſeiſed of certaine landes whych are deſcended to his heire beeing within age, where in deede in his life time I recouered this land againſt him, and ſuing no execution, ſuffered him to dye ſeiſed thereof, now vpon this office returned into the Chauncery, ſhall I come and ſhew my right, that is to ſay, this recouerie, and auerre that this land found by office, is the lãd that I recouered, or parcell thereof, which beeinge ſo proued and tried, I ſhall haue an *Ouſter le maine*. H. 3. H. 7. Like lawe is it if the kings tenante diſſeiſed me of thoſe landes, and I made my continual claime, or that I had title to enter for conditiõ broken into the ſaid landes in the life of the kinges tenaunt, and I entred, & after was diſſeiſed by him. But *quære*, if I did not enter in his life, whether now I may be holpen by a *Monſtraunce de droit*, vppon the Kinges poſſeſſion. And mee thinkes not, becauſe I haue no right in that caſe till I enter, for vntill that time the right continueth ſtill in him, ſo that the king hath a right ere I can haue a right, which

ought

ought to be preferred and take place, ſince it is but for a time before mine. And for theſe caſes ſee the booke of H. 3. H. 7. fo. 2. But if the king bee entitled by matter of record, not trauerſable, as if hee bee entitled by double matter of record, in this caſe I cannot haue my *Monſtraunce de droit*, no more then I can haue in the like caſe of Trauerſe, vnleſſe my title bee found by one of the ſayd records. H. 9. E. 4. fo. 51. As take the caſe to bee, it is found by office that one ſuch that holdeth of the king diſſeiſed mee, & then cõmitted a felony, vpon whom I entred, after which entrie the ſaid tenant was attainted of the felony. In this caſe I ſhal haue the land out of the kings hãds by a *Monſtraunce de droit, cauſa quia ſupra*. And yet the kings title is here by a record, and not trauerſable, that is to ſay, the attainder. But what then? My title is alſo found by office, and appeareth by matter of record, which being proued true, doth clerely auoyd the kinges poſſeſſion, and that is the reaſon I ſhalbe receyued in this caſe to a *Monſtraunce de droit*, as appeareth in H. 3. E. 4. fo. 26. A. 4. H. 7. fo. 6. And therewith agreeth the booke P. 4. H. 7. f. 7. where king Richard the third was attainted of treaſon by Act of Parliament, and found by office that hee was ſeiſed of certaine land, commeth one B. and ſaith, that in the ſaid Parliament it was enacted, that an attainder of Treaſon had againſt the father of the ſayd B. ſhould be auoyded and annulled, and he reſtored to his landes, and that theſe landes compriſed in the office were in the handes of the ſaid king R. by attainder of his father, and adiudged ỹ vpon this *Monſtrance de droit* the party ſhould haue reſtitution, becauſe his right appeared by matter of record. Otherwiſe is it where it is found by office ỹ ſuch a one is attainted of felony, & is ſeiſed of ſuch lãds which are holdẽ of ỹ king, now hee that hath cauſe to ſue his *Monſtraunce de droit*, cannot be admitted thereunto, by reaſon of theſe two records. How be it, if it bee ſo that there is ſuch attainder in deede,

then

then may the party that would ſue a *Monſtraunce de droit* ſay that there is no ſuch recoꝛd of attaindeꝛ, which being found true, hee ſhalbe receiued to hys *Monſtraunce de droit*, as appeareth in the ſaid booke P.4.H.7.f.7. Foꝛ now is there no recoꝛd againſt hym but onely the office, and notwithſtanding that by thoffice thattaindour is found, yet this finding makes nothing foꝛ the kynge, if it bee vntrue. Foꝛ the iury can neuer find a matter of recoꝛd, and if they do, it is to litle purpoſe: foꝛ ẏ recoꝛd is euer triable by it ſelfe, & if there be ſuch a recoꝛd it will appeare though they fynd it not, and if there be none, the fynding of it is voide. Thus may you ſee that a *Monſtraunce de droit* lyeth ſome times although the kynge bee entytled by double matter of recoꝛde, if it ſo bee that the parties title appeare by matter of recoꝛd, oꝛ elſe yt lyeth not. And yet *Choke*, *Littleton & Nedham*, held oppinion in H.14.E.4.7. that if it bee found beefoꝛe theſchetour that one was tenaunt in taile of certaine landes holden of the king, the remaynder to another in fee, & that he in ẏ remainder is outlawed of felony, and ẏ tenant in taile is dead without iſſue, where in deede hee beeyng tenaunt it tayle beefoꝛe the ſtatut *De donis condicionalibus* after that hee had iſſue enfeffed one B. in this caſe the ſaid B. ſhall ſhewe this matter, and that the bilagary was after the feoffement made and ſo haue the lands out of the kynges handes by a *Monſtraunce de droit*: But it ſhoulde ſeeme their oppinion is againſt the lawe and the bookes beſoꝛe reherſed, vnles this feoffement were found by office, becauſe it appeareth that the king in his caſe is entitled by double matter of recoꝛd, And note that where the kinge is entitled but by office alone, there the party may haue hys *Monſtraunce de droit* although hys title bee not found by offyce, as well as hee ſhould in the like caſe if hee were to take a trauerſe H.9.E.4.5. but otherwiſe it is where the king is ẽtitled by another

recoꝛd beſide the office which is not trauerſable, there he ſhal not bee receiued vnleſſe the parties title appere by matter of recoꝛd. And note that if the king haue committed the land ouer, he that ſueth his *Monſtraunce de droit*, muſt ſue a *ſcire fac.* againſt ẏ cõmittee euen as he ſhould vpõ a trauerſe, & as foꝛ taking the lands to ferme oꝛ foꝛ ſuing the ſaid *Monſtraunce de droit* during ẏ time ẏ heire in whoſe right the kyng hath ſeiſed, is within age. Like lawe is to be vſed as is befoꝛe declared vpon ẏ title of trauerſe. C.20.

Peticion. Cap.xxii.

PEticion is all the remedy the ſubiect hath when ẏ king ſeiſeth his lãd oꝛ taketh away his goods from him, hauing no title by oꝛder of his lawes ſo to do, in which caſe the ſubiect foꝛ hys remedy is dꝛiuen to ſue vnto hys ſoueraigne loꝛde by way of peticion onely: foꝛ other remedy hath he not, as it hath beną ſufficientlie declared beſoꝛe vpon the 15. chapter of the kinges pꝛerogatiue. And therefoꝛe is his peticion called a peticion of right, becauſe of the right the ſubiect hath againſt the king by the oꝛder of his lawes, to the thing he ſueth foꝛ. And this peticion may be ſued aſwel in ẏ parliament as out of the parliament, and if it be ſued in the parliament, then it may be enacted & paſſe as an act of parlemẽt, oꝛ els to be oꝛdꝛed in like maner as a peticiõ ẏ is ſued out of ẏ parlemẽt, which is in this maner, firſt after ẏ peticiõ is endoꝛſed, it ſhalbe deliuered to ẏ Chaũceller of Engläd, & thẽ ſhal there be a cõmiſſiõ awarded out of ẏ chãcery to find ẏ right oꝛ title of him ẏ ſueth ẏ peticiõ, which beig foũd by ẽ-

queſt

queſt, then he may enterplede with the king & not before, as appeareth in P.18.E.3.f.15.H.4.E.4.f. 23.H.11.H.4.f.52. & H.10.H.4.f.4. And if vpon the ſaid cõmiſſiõ no title be foũd for ẏ partie but onely for the king, yet the petition ſhall not abate, but the party ſhall haue a newe commiſſion in ẏ caſe, for the petition is but as void vntill ẏ parties title be founde by office, & is not to bee ſaid depending vntill that time, as appeareth in H.3.H.7.f.13. *quære* for he ſued a newe petition in ẏ caſe. And note ẏ when the petition is endorſed, ẏ party muſt follow & purſue the ſame according to ẏ endorſement, or otherwiſe his ſuit is void: becauſe ẏ endorſemẽt is his warrant therein, as appeareth in *Petition* 1.H.18.E.3.P.22.E.3.5. & *Petition* 18.H.46.E.3. and therfore ſometime billes of petition bee endorſed & ſent into the kinges bench or common place & not into ẏ Chauncery, & ẏ groweth vpon a ſpecial cõcluſion in his petition & a ſpecial endorcement vpon ẏ ſame, for the generall concluſion is *que le roy luy face droit & reaſon*, which is as much as if hee had prayed reſtitutiõ of that ẏ he ſueth for: And thereupon ſuch a generall concluſion the endorſement is *Soit droit fait as parties* which euer is deliuered vnto the Chaunceller, as is declared. But if the concluſion in the petition be ſpecial and the endorſement ſpeciall, then they ſhall proceede according to the ſaied ſpeciall endorcement. As for an example, ẏ king recouereth in a *Quare impedit* by default againſt one that was neuer ſomoned, in thys caſe the party ẏ loſt cannot haue a writ of diſceipt vntill ſuch time as he haue ſued vnto the king by petition for the ſaied writ, & if in his petition he conclude and pray ẏ the kyng do him right generally, nowe the Juſtices beefore whom the recouerie was had cannot examine the deceipt without an originall writte directed vnto them for that purpoſe, and yet before he obtained that writ his right ſhalbe enquired of by commiſſion, but if hee conclude ſpecially in his petitiõ ẏ

it maye please his highnesse to commaunde the Justyces to proceede to theramination, whych petition is endorced accordingly, then may they doo it without any such writte or cõmission to be sued, as appereth in Y.10.H.4.fol.4. So euer ẏ folowing & pursuing of the thing must be according to thẽdorcement, for howsoeuer the conclusiõ in the petition be, ẏ endorcement may bee alwaies as it shall please the kynge as me seemeth, & according to that the party must pursue it, And note that in euery petition where the king hath graũted the land ouer to another, a *scire fac.* must be awarded against the patentee lyke as it shalbee where a trauerse or *Monstraunce de droit* is tended, which patentee if he haue not ẏ whole fee simple but ẏ there is a reuersiõ in ẏ king or that the king is bound to warrantie, when hee appeareth vppon ẏ *Scire facias* he may pray a writte of Search to bee awarded into the treasory to serch what they cã find for the kings title, as appeareth in H.9.E.4. fo.51. where *Sottle* sayth that euery petition must make mencion of al the kings titles, for if it bee founde by the writt of search that any bee omitted, the petition shall abate: and the reason of it is because ẏ if on thys suit of petition the king take an issue with ẏ party which is found against him, hys highnesse then shalbe concluded for euermore to claime by any of the pointes contayned in the saied petition. And herewith agreeth the booke T. 16.E.4.fo.6. but *quære* if search shalbe graunted vpon a trauerse or *Monstraunce de droit*, beecause ẏ statut of Anñ.14.E.3.ca.13. ẏ concerneth search doth speake onely but of a petiticõ, but to ẏ it may be said ẏ the time of making of ẏ statut there was no trauerse geruẽ, And *Screne* sayeth *Peticiõ* 6.A.7. H.5. that search shal not be graunted but where one sueth by petition. And note also that in euery petition whether it bee sued in the Parliament or els where, or whether the landes remaine in the kinges handes or not in the

kynges

kinges hands but be graunted ouer, yet writs of sereth shal be awarded to search the kings title ere the party shall enterpled wᵗ the king. Also it appeareth in the booke of T.16. E.4.f.6. before remembred that vpon a petition ỳ kings patentee had ayd of the king, & there appeareth also that if the king bee not intitled by any matter of record but without any title doo enter into my lande whereby I sue vnto hys highnesse by petitiõ, that in this case no search shalbe graũted, because no title can be entẽded for the king in such case, Thus haue I opened & declared the manner of suing a petition, but to declare specially where it lyeth and where not it were a long matter to entreat of. But generally & by generall rules a man may briefely declare it, that is to say, in al cases where the party hath a right against the king, and yet no trauerse or *Monstraunce de droit* will serue, there is he driuen to his petition. As for an example, where the kynge is entitled by double matter of record. Like lawe is where he is entitled by a record not trauersable, as take the case the king recouered by assent and without title, a straunger that hath good title shall not falsefy this recouery by a trauerse or *Monstraũce de droit*, but is driuen to hys petition, so it ys where the kyng recouereth by erronious proces the party shall not haue a writ of error, vntill he haue sued by petition for it. P.17. E.3.f.31. So likewise it is if lãds are holdẽ of me by knightes seruice a straunger bringes a *Precipe in capite* of those landes against my tenaunt and recouereth by default although by this recouerie I am not put out of possession of my seignorie but ỳ the tenaunt holdeth of me as he did beefore, and also of ỳ king by conclusion, yet in this case if ỳ recouerer dye his heire wiñ age, & ỳ king seiseth ỳ ward, I am driuen now to my petition for ỳ ward, as appereth in T.17. E.3.37. for this is another thing then euer I was seised of. Also it is a general rule ỳ where a straũger ỳ hath title can-

not enter vpon a common person but is driuen to his accion there he can haue no remedy against the kinge but onely a petition, as take the case to be. It is found by office the kings tenant in chiefe died seised his heire wtin age where in deede the said tenaunt had nothing but by disseisin done to me, & I suffred him to dye seised without any claime made, in thys case I get no remedy by *Monstraunce de droit* or trauerse, but am driuen to my peticiō. And so in al cases like where mine entre should be tolled if the landes were in the handes of a common person, as appeareth in M.7. H.4.f.33. T.9. H. 4. f.5. Also where as the king doth enter vpon mee hauing no title by matter of record or otherwise, & put mee out, & deteines ẏ possession from me ẏ I cannot haue it againe by entry wout suit, I haue thē no remedy but onely by petition. But if I be suffred to enter, mine entry is lawfull, & no intrusiō: or if the king graunt ouer the landes to a straunger, then is my petition determined, & I may now enter or haue my assise by order of the common law against the said straunger beeing ẏ kinges patentee, as appeareth in M.4. E.4.f.22. & M.24 E.3.f.65. H.10. E.3.f.2. And a great difference is betweene this case & the case where the king is intitled by double matter of record or such like, for in these cases notwŧāding ẏ grant made ouer by his highnes of ẏ lāds to snother yet am I driuē still to my petition to ẏ king & haue no other remedy, M.7. H.4.f.21. But it is not so in this case & ẏ reasō of this diuersitie is because ẏ whē his highnes seiseth by hys absolute power cōtrary to the order of his lawes, although I haue no remedy againſt him for it but by peticiō for ẏ dignities sake of his pson, yet whē the cause is remoued & a comon person hath the possessiō, thē is mine assise reuyued, for now the patentee entreth by his owne wrong & intrusion, & not by any title ẏ the king geeueth him, for ẏ king had neuer title ne possessiō to geue in that case: & therfore not like the other

cases

cases before, where the king hath the landes by the order of his lawes ỳ is to say by double matter of record or such other like. And this appeareth in Y.4.E.4.f.21.& 25.& Y.24. E.3. f.64.& *Trauerse*.34.33.li.All. Like law is if I haue a rẽt charg out of certaine land & the tenaunt of the lande enfeffeth the kinge by deede enrolled, now during the kings possession, I muſt sue by petition, but if his highneſſe enfeffe a straũger I may diſtraine for my rent vpon ỳ straunger, & so is it in al ỳ cases before, where a man may haue his trauerſe or *Monſtraunce de droit*, if the landes be once out of the kings hands the party then may haue his remedy ỳ the comon lawe geeueth him: for in al theſe caſes the petition did lie onely for the dignity of his perſõ & not for the right that he had to the poſſeſſion of the thing. But if the king purchaſeth lands holden of me, learne what remedy I may haue for my ſeignory during the kinges poſſeſſion: for *Wilby* ſaith in *Aſſiſe* 124. Y. 20.E.3. that I haue no remedy in that caſe, & if his highnes make a feoffement of theſe lands to hold of himſelfe, yet can I not diſtraine for my ſeignory like as I might do in the caſe of the rent charge before, becauſe there cãnot be ii. ſeignories of one ſelfe land, but am driuen to my petition in this caſe, for the king vpon this feffemẽt by order of his lawes ſhould haue renued ỳ ſeignory in me ỳ is to ſay, to haue made the feoffee to hold of me of whõ it was holdẽ before as appereth in *Peticion*.18.& 19.Y.46.E.3.& Y.17.E.3.f.59. & ſo hath it bẽ vſed alwaies where his highnes hath lands by forfeiture of treaſõ hold of a cõmõ perſon, if he make a feoffemẽt of theſe lãds it muſt be *Tenendũ* of thẽ ỳ they were holdẽ of before, as I haue opened vpõ ỳ rii. chap. of ỳ kigs prerogatiue, & ſo it is where ỳ time is deuolued to his highnes for a mortmaine: But ỳ is geuen by ỳ ſtatut *de religioſis*. Alſo if ỳ king diſſeiſe my tenãt, durig this poſſeſſiõ I haue no remedy for my ſeignory but only by petitiõ, & if ỳ king enfeffe my tenãt to hold

of his highneſſe, yet haue I no remedy for my ſeignory, but onely by petition. But if one hold certein lands of me which are falſely found by office to be holden of the king in Capite, and ỳ king ſeiſeth them & enfeoffeth my tenaunt thereof, to hold of his highnes, in this caſe I may now diſtraine for any ſeignory and am not out of poſſeſſion, & theſe caſes appere Ỳ.32.E.3. *Aſſiſe* 122. & 124. Ỳ.20.E.3. *Auowry*, 113. & Ỳ. 46.E.3.11. & the reaſon of the diuerſitie is this, becauſe ỳ in the laſt caſe my ſeignory was neuer ſuſpended, but euer more had his beeing & ỳ notwithſtanding ỳ office, for it dyd not appertaine to me to trauerſe ỳ office & diſcharge ỳ tenure but ỳ matter was left to my tenaunt to do, & ſeeing he dyd it not, he hath charged him ſelfe of a tenure by way of colluſiõ to the king as wel as to me, but it is not ſo in the other caſe, Alſo it is to be noted that if the kinge ſeiſe landes by title of wardſhip & make a feoffement therof, in this caſe the heire neede not to ſue his petition but may haue a *Scire facias* to repeale the ſaid letters patents, becauſe ỳ king was deceiued in his graunt as appeareth T.7.Ỳ.4.f.17. & Ỳ.21.E.3.f. 47. For there the king himſelfe is in poſſeſſion ſtill till lyuere be made, ſo the heire there hath no cauſe to ſue by petition, and ỳ kinge is bound to deliuer it vnto him in whoſe right he ſeiſed. Alſo note that ſute by petitiõ cã be to none other thẽ onely to the king, for no ſuch ſuit ſhalbe made to the Queene or to ỳ lord prince, for theſe ꝑſonages haue no ſuch ꝓrogatiue as it appereth in Ỳ.11.Ỳ.4.f.7.Ỳ.10.Ỳ.4. *Scire fac.* 135.Ỳ.10.E.3.f.26. & *Voucher* 110.Ỳ.14.E.3. but though ỳ king be ſeiſed ſõetime in another bodies right, & not in his owne yet ỳ ſuit ỳ is to be made muſt be by petition as wel as if hee were ſeiſed in his owne right, as apereth in 10.Ỳ.4.f.4. & as I ſaid in ỳ beginnig, a mã ſhal haue his petitiõ for goods as wel as for lãds, as where thexcheqer ſeiſeth goods of one ỳ is vtlawed & hath accõpted for thẽ in ỳ exchequer, & after thutlagary

gary is reuerſed, in this caſe ỹ party hath no remedy for his goods but onely by petition. And this caſe you ſhal ſee in T. 34. H. 6. f. 51. Howbeit *Cateſby & Huſſey* hold oppinion to the contrary hereof M. 1. H. 7. f. 7. And learne if a petition be ſued for lãds, & the plaintife be nonſuit, whether it be peremptorie or not, beecauſe ſome ſay that that ſuit is as it were hys writ of right, and hereof ſee the booke H. 11. H. 4. fol. 52, & M. 3. H. 7. f. 14.

¶ Where a *Scire fac.* muſt be ſued before a liuery or *Ouſter le maine*. Cap. xxiii.

IF the king bee ſeiſed of a ward and graunteth it *durante minore ætate*, nowe when the heire commeth of ful age, and ſueth his generall liuery, hee needeth not to ſue a *ſcire fac.* againſt the patentee, becauſe his eſtate is determined by the full age of the heire, and yet it may bee that the heire had forfeited his mariage vnto the patentee, and then hee hath good cauſe to retaine the land till he be ſatiſfied of the forfeiture. But the lawe ſhall not entend any ſuch forfeiture to bee, and therfore there needeth no *Scire facias* bee ſued. Lyke lawe is it, as ſeemeth if the king graunt ỹ wardſhipp for no time certaine, but *quamdiu in manibus noſtris fore contigerit*, if hee make a ſpecial liuery vnto the heire being within age, there needeth no *ſcire fac.* to be ſued, ſo is it where the graunt is but *durante beneplacito noſtro*, but if the kinge haue land in ward and enfeffeth therof a ſtraunger, ſome thinke ỹ heyre nedeth not to ſue any *Scire facias* againſt the feffee but at his pleaſure, and ſome other think he muſt, becauſe his eſtate is not determined by the full age of the heire, as it is in the firſt caſe I put beefore. And it may bee ỹ an auncеſter collateral

laterall vnto the child hath released with warrantie which is descended, which the feffee might plede if he came in by *scire fac.* or els by the liuerie the said warrantie is vtterly lost, & these cases appeare P.7.H.4.f.17. 21.& 32.& 41.M.10.H. 6.f.20.& P.5.E.4.f.3.M.21.E.3.fo.47.H.3.H.7.fo.3. Yowbe it mee thinkes it were wisedome for the heire to sue a *Scire facias* to thintent that he thereby w̄ the kinges helpe might repeale the said letters patēts & bring them as it were out of his way, which thing he may sooner brig to passe by ỹ kings suit then by his owne. Also the heire when hee sues liuery neede not to sue any *Scire fac.* against him ỹ hath the lands to ferme vpon the trauerse, as appereth in T.1.H.7.f.27.for he hath no terme certein in the land but *donec discussum fuerit*, which wordes are become void after the heire is of full age because it cannot be thē discussed w̄out prejudice of the heire and therefore void. Then further let vs se where he that sueth by petition, or ỹ tēdeth his trauers or *Monstraunce de droit* shal sue a *scir fac.* and where not. And as to that it is a generall rule that if the king haue graunted the wardship of the landes ouer for any terme certaine, or graunted any other certeine estate in the landes, he that sueth his petition, *Monstraunce de droit*, or trauerse, must sue a *scire fac.* agaynst the kinges patentee in such case, but he needeth not to sue any against the heire in whose right the king is seised of the land, because he that surth doth not plead with the heire but onely with the kyng or such as hath his interest, as appeareth in 37.lib.ass.11. Like lawe it is if the kinges graunt bee but *durante beneplacito nostro*, or that it be made hanging the trauers, petition, or *Monstraunce de droit*, in this case hee that sue the nede not to sue any *Scire fac.* And these cases appereth P. 5.E.4.f.3.& *Briefe* 206.P.13.E.3. And note that if the king graunt the wardshipp to one which graunteth it ouer to the husbande and to his wife, then must there a *Scire fac.*

bee

be sued both against the second lessee, and the patentee, but the wife needs not to bee named in the *Scire fac.* For there lyeth no voucher in this *Scire fac.* Howbeit in a writt of gard she should haue bene named, because of the voucher, and this case is adiudged *Briefe* 618. P. 46. E. 3. & yet neuertheless *Newton* is of opinion in 48. H. 6. fol. 17. that no *Scire fac.* shalbe awarded against the lessee in this case but onely against the kinges patentee. And learne if the king graunt but the borde alone, whether there needs any *Scire fac.* to bee sued or no. Also note this case, that is to say, whether ỳ king seised for wardship before office & made a graunt ouer, & after office was found whereby it appeareth ỳ the childs father in whose right the king seised, was but tenãt for terme of life, the reuersion to another, in this case he in the reuersion had an *Ouster le maine* wõut suing any *Scire fac.* against the patentee, as it appeareth H. 10. E. 3. fo. 2. & at this day the case is more stronger, for such a graunt were void, because it is before office. And therefore vpon any such void graunt there needs no *scire fac.* And in 14. E. 4. f. 7. it appeareth ỳ one had trauersed an office which was sent into the kings bench to trie, and had forgotten to sue his *Scire fac.* & yet hee was suffred to goe againe into the Chaũcerie to pray a *scire fac.* vpon the first trauerse, for it was said that the Chaunceric is a courte of conscience, and for that cause the thinge that was there amisse may bee reformed at all times. And learne if this *Scire facias* be sued against many, and one of them dieth, whether this shall abate the trauerse, *Monstrance de droit*, or petition whereupon it is sued, or els only the *Scire fac.* It seemes that nothing shall abate but the *Scire fac.* because no mention is made of the tenaunt neither in a trauerse, *Monstraunce de droit*, or a petition. And of this matter see the booke in P. 7. H. 4. f. 33.

Duller.

Ouſter le maine. Cap. xxiiii.

Ouſter le maine is the iudgement that is geeuen for him that tendeth a trauerſe or ſueth a *Monſtrance de droit* or petition, for when it appeareth vpon the matter diſcuſſed that the king hath no right nor title to the thing hee ſeiſed, then iudgement ſhalbee geeuen in the Chauncerie that the kings hands be amoued, & thereupon *Amoueas manum* ſhalbee awarded to theſcheto? which cõterualles as much, as if the iudgement were geuen that hee ſhould haue againe his land, as appeareth in M.24.Ed.3. 65. and this iudgement ſometime is geeuen in the kinges bench and not in the Chauncery, and that is in caſe where the parties deſcende to an iſſue, then for the triall thereof they of the Chauncery muſt award a *Venire facias* retournable in the kinges Bench at a certaine day, at whych day notwithſtanding that the Shirike returne not the writ yet the *alias venire facias* ſhall not bee awarded out of the Chauncerie, but out of the kinges Bench, for there and no where els it is recorded, *quod vicecomes non miſit breue*, as appeareth in M.13. E.4. folio. 8. And when the iſſue is founde for the partie, they of the kinges bench ſhall geeue iudgement and award an *Ouſter le maine* without ſuing for the ſame in the Chauncerie, as appeareth in M.21. H.7. fol. 5. and 29. lib. Aſſ. 43. and yet the recorde of the iſſue that was tried was not ſent thether, but onely the tranſcript thereof, but what then? the iudgement is to bee geeuen vppon the verdict which is there of record, and when both courtes bee courtes of the common law and the Kinges Courtes, they vſe not to remaund any thinge to the place from whence it came, but to geeue iudgement there where it is tried. And *Shard* ſayd, that when a Recorde comes once into the kinges Bench, it ſhall neuer go from thence.

Alſo

Also note that sometimes there goeth an *Ouster le maine* as well to the kynges patentee as to the eschetour, and that is where the king hath graunted the thinge that hee seysed to any other, but notwithstanding that there go such writes of *Amoueas manum* both to the eschetor and to the party, yet the kynge is out of possession as soone as iudgement is geeuen in the Chauncery, not forcing whether any of these writtes bee awarded or not, eyther to the eschetour or to the party: and thereupon the party for whome iudgement ys geeuen may enter forthwith into the landes, and shalbee sayd no intrudor, as appeareth in H.10. Ed.3. fol.2. And the reason of it is because the iudgement tyeth not the king to ỹ deliuerie of the possession, but onely to leaue his hãds of the possession. And note that if a *Diem clausit* come to the eschetour, hee by vertue of that writ before hee make any enquiry may seise the land for the kings behoofe, which after hee hath once seysed, if after by office no tytle be found for the kynge, then the party that ought to haue agayne the lande, may sue for the same in the Chauncery where the office is returned and then *Amoueas manum* shalbe awarded, for vntill the makynge of a statute at Lincolne Anno 29. E.1. called the statut *De escaetoribus* the party had no remedy in such case but onely to sue vnto the king hym selfe, as it appeareth by the sayed statute, & nowe that statut geeues an *Ouster le maine*, *vna cum exitibus*. Howebeit thys *Ouster le maine* may not be sued by parcels no more then a liuery, and therefore if dyuers writes or commissions bee awarded into diuers counties to enquier after the death of A. B. and in one countie it is found that hee holdeth nothing of the kynge but in socage, and in the same Countyand by the sãe enquest it is found that he holdeth of another by knightes seruice, yet ỹ lord by knights seruice getteth no *Ouster le maine* vntil ỹ other enquestes be also returned in, *Causa qua supra*,

For

For if he ſhould, then he ſhould haue it for the lands and not for the body, and ſo ſhould haue it by parcels, for the body may not be deliuered as long as there is any enqueſt to bee returned in. And the reaſon of it is, beecauſe that enqueſt may find a tenure of the king by knightes ſeruice in chiefe in which caſe his highneſſe ought to haue the whole lãds, & if it be but a common tenure by knightes ſeruice, yet his highneſſe at the leaſt ought to haue the preferrement of the body yea & though the lord of whom it is found, to be holden by ỹ Archebiſhop of Caunt. or ſuch a one againſt whõ the kings prerogatiue will not hold for the lands, yet beecauſe it holdes for the bodies, he getteth no *Ouſter le maine* vntill all the offices bee returned in, for the reaſon beefore made, as appeareth in *Liuerie* 29. H. 16. E. 3. Howbeit by fauor and grace of the court tharchbiſhop had his *Ouſter le maine* beefore the other offices returned. And ſo note how in tims paſt mẽ haue ſued *Ouſter le maine* vpon a ſeiſin made for the kinge although ỹ office found afterward did not entitle his highnes. Howbeit at this day it is not ſo vſed, for the ſcheto will not ſeiſe vnleſſe there be an office foũd, although he might lawfully do it by the words of the writ *Diem clauſit*, which vſage I do nothing miſlike, conſidering ỹ great trouble it anoydeth ỹ might elſe enſue to the kinges ſubiects. And note ỹ in al caſes where the king is ſeiſed or in poſſeſſion of ỹ land by office or any other matter of recorde, his highneſſe ſeiſin cannot be deliuered out of him vntill ſuch time an *Ouſter le maine* bee ſued, as if the king be ſeiſed by office of the land, of any Ideots, or for *annũ, diem & vaſtum* of lãds of any ỹ is attainted, in theſe caſes he ỹ ſhould haue theſe lands after the kings title determined muſt ſue an *Ouſter le maine*, otherwiſe it is where the king is not ſeiſed of the lande but onely entitled to the profits, as of the lands of him that is outlawed in a perſonall accion, or of clerke conuict or ſuch like, there

neede no *Ouster le maine* to bee sued, as appeareth in *Trauerse* 48. H. 4. E. 3. fo. 47. and 9. H. 6. fo. 20. and if the lands which is seised into the kinges handes be holden iointly by many, yet euerie one of thē by him selfe may sue his *Ouster le maine* of his owne part without his companions, as appeareth in T. 2. H. 4. 23.

Liuerie. Cap. xxv.

The maner of a suing of a generall liuerie doth partly appeare in the title of Liuerie, in the great Abridgement of Iustice *Fitzherbert* An. 12. H. 4. *Liuerie* pl. 4. & Anno 21. R. 2. *Liuerie* pl. 5. Where it is declared that after the heire that was in the kinges warde is come to full age, then a writ *de Etate probanda* shalbe awarded vnto the Shirife of the shire where the said heire was borne, to enquire of his age, in which case it is required by the law that euery one that shall passe in that enquest shalbee of the age of xlix. yeares, meaning thereby that they and euery one of them should be of ful age at the birth of the child, because that such haue better knowledge and remembrance then other of lesser age haue, and that the heire that is in ward enforme the enquest by certaine signes and tokens of the time of his birth, as to say, that that yeare there was a great tempest or a great plague, or such like, which signes so geuen in euidence shalbee retourned by the shirife as well as the principal matter. But whether it be requisite to haue xij. or a lesse number in the said enquest or not, learne, for some thinke that any number from two vpward will serue, because y triall is by proues, and see the new *Natura brevium* fol. 253.

C.

fo.253. E. where it appeareth that this writ of *Etate probãda* was directed to the eschetor of the countie where hee was borne and not to the Shirife. Yowbeit note alwaies that they where the land is, shall neuer enquire of this matter, vnlesse the birth and land were both in one shire, for they haue enquired of it alreadie, that is to say, when they dyd finde the first office. Thus when they haue found his age, that inquest shalbee returned into the Chauncerie, & from thence shalbee awarded a writ to the Lord keeper of the priuie Seale, signifying vnto him that the heire is of full age, and vppon that a priuie seale shalbe directed to the Chamberlayne of England to receiue his homage, which beeing receiued, the said Lorde Chamberlaine shall certifie the Lord Chauncellor by writt of receipt thereof, and then shal the heire haue his liuery. But it seemes that if the heire were neuer in ward but of full age at the death of his auncestour and so found by office, that then he shall haue liuerie, as is declared vppon that office onely, without suing any writ of *Etate probanda*: for the writtes of liuerie in this case make no mention of any *Etate probanda*, as they doe in the other case, but if the heire bee within age, and in the kinges ward, and after when he comes to his full age other landes descend vnto hym which the king also seiseth by an enquest that findes the heire of full age, yet thys notwythstanding hee must now sue an *Etate probanda* vppon both offices, as appeareth in M.13. H.4.6. and the reason of it is, because the findinge of him of full age is but as voyde as long as there is a record which found him wythin age, to the which record the king might cleaue vnto, as the best record that maketh for hym vntill such time the contrarie thereof be proued by the writ of *Etate probanda*. Yowbeit at this day the statut made Anno 33. H.8. hath much abridged the

the fees that haue ben geeuen vpon the suit of a generall liuery, namely for liueries to be sued of clere yerely value of v.li. or vnder, and that it may be sued without any office to be found. But I doo not see that the maner of the suit is in any other point altered or changed by the said statut but it remaines as it did before. And that statute also geeueth men licence to sue a generall liuery of landes not exceding the clere yerely value of xx.li. wherby I see no let but that a mã may sue his generall liuery also for landes aboue the yerely value of xx.li. as he might haue done before the making therof, for this statut is not contrary to any lawe that was beefore in that point, sauing that a generall liuery vnder the value of xx.li. cannot passe or be sued, if he haue not first hys warrant from the master of the kings wards & liueries, surueiour, atturney, and generall receiuer, or three of them, signed & subscribed wt their names & hãds, thus may you see ỳ maner of ỳ suing forth of a generall liuery, which liuery may not be sued by parcels as I haue said before, but entierly, that is to say, of al the landes the Kynge is or ought to be seised of in his right that sues the liuery. And therefore if the heire sue liuery but of parcel of that that is foũd by office or if the auncestor were seised of other landes then are found by office, if the heire sue his generall liuery, before an office therof found, omitting them in the liuery, the liuery is missued, as appeareth in *Liuery* 28.T.12.R.2.fo.44. E.3.fo.1. & 25.& H.2.H.7.fo.12. and therfore it behoues the heire before he sue his liuery, to cause an office to be found in euery shere where his auncestour had any lands. And this entyer liuery is entended as well of landes holden of other Lordes, beeinge in the kinges handes, as of the landes that are holden of the Kynge, and therfore if a manne holde of ỳ Kynge in chiefe by knightes seruice, and of other lordes in socage and dies, his heire being a daughter within the age of xiiii. yeares, in this case when ỳ said daughter commeth at the age of xiiii. yeres, she getteth no liuery of the lãds hol-

den in socage: but must tary till shee be of the age of xxi. yeres, ỹ shee may then sue liuery of the whole, as appereth in *Liuery* 19. H.35. H.6. But note ỹ in some cases one shall haue liuery of parcell, and that is where landes discend to diuers daughters, & one is within age, & the other of full age, now shee of full age shal sue liuery with a partition of her part of al thinges that are seuerable: and this liuery is wel sued although it be not of the whole lads discended, but if there be any thinges in the kinges handes not seuerable, as aduowsons, or such like, that must so remaine still vntil the other be of full age, as appeareth M.38. H.6. f.9. And so note, that in a generall liuery, if any thing be omitted, the liuery is missued: & therfor sõe say, ỹ after such a general liuery had, there shalbe a writ awarded to enquier of the concealemẽt, that is to say, whether the heir hath left out of his liuery or not, any of the landes that were his auncestors, which writ is called *breue de terris concelatis*. And see the statut 28. E.3. ca. 4. that geeues the rents to them that sue liuery, when the rent day commeth, although it commeth next day after their liuery. And looke more for liuery in the exposition vpon the thyrd chapiter of the kinges prerogatiue.

Reseiser. Cap. xxvi.

Reseiser lieth where a general liuery or *Ouster le maine* is missued by any person or persons vnduely, and not according to the forme and order of the law, or vpõ an office which is sufficiẽt in ỹ lawe for the party to haue liuery or *Ouster le maine*. In this case ỹ king may reseise the lands wout suing any proces against ỹ party, & shalbe answered of al ỹ meane issues & profits receiued & takẽ from ỹ time of their first seisin, if it were sued out of his hãds by an *Ouster le maine*, & if by a liuery, thẽ but frõ ỹ time of the liuery And the party ỹ hath pursued it shal be accompted nõe other

thẽ

then as an intruder vpon the kinges possession after office, in which case no freehold shal bee adiudged in him, nor hys wife of that possession shal haue any dower, as appeareth in *Liuery*. 3. H. 18. E. 3. H. 21. E. 3. fo. 1. & H. 24. E. 3. fo. 65. But if one haue *Liuery* or *Ouster le maine* by due proces, and after a record is found in the treasory, or els where, or an office in the countrey, whereby the king is entitled of a title growen vnto him before the suing of the said *Liuery* or *Ouster le maine*, although ỹ party should haue had no *Liuery* or *Ouster le maine* in case the said records had then appeared, vnlesse hee could haue auoided the said recordes, yet for as much as they did not then appeare, he shall not be now after *Liuery* or *Ouster le maine* cast out of his possession without a *Scire facias* to bee pursued against him, for so hath the statut prouided that was made at Lincolne in the 29. yeres E. 1. called *Statutum de Escaetoribus*, the tenoure whereof is this: *Ad parliamentum regis apud Lincolne tentum in octabis sancti Hillarii anno regni sui vicesimo nono, per consilium regis concordatum est coram domino rege, ipso rege consentiente, & illud extunc fieri & obseruari precipiente, de consilio venerabilis patris VV. de Langton Couent, & Lychf. episcopi tunc eiusdem regis Thesaurarii Iohannis de Langton Cācellarii, & aliorum de consilio tunc ibidem presentiū, et coram rege, videlicet, Cum inquisitiones per escaetores suos captæ per quecunque breuia regis in cācellaria ipsius dñi regis fuerint retornā, & per easdem inquisitiones compertum fuerit quòd nihill tenetur de ipso dño rege, per quod custodiæ terrarum & teñ hīnoi ratione inquisitionis in manum dñi regis per ipsos escaetores captæ, ad ipsum dñm regem nullo modo pertineant: quòd statim & absque dilatione aliqua mãdetur per breue dñi regis de cancellar. precipiend. quod escaetores de terris & teñtis sic in manū dñi regis per ipsos captis, de tẽpore quo terræ & teñ illa in manu dñi regis extiterint, integrè reddãt ipsi vel ipsis, cui vel quib⁹ per inquisitiones prius per eosdem escaetores capetas compertum fuerit, quod terra & teñta illa debeant remanere, saluo semper dño regi, quod si postquam escaetores sui manus amouerint per breue ipsius dñi regis, vt predictum est, aliquid cõtigerit*

inueniri in cancellaria, vel ad scaccarium, vel alibi in curia ipsius dñi regis, per quod custodia terrarum aut teñ eorundem, de quibus eschaetores manus suas amouerint in forma predicta dño regi pertineant, quòd statim premuniatur ille, in cuius seisina teñta predicta fuerint per breue de cancellaria, quòd sit ad certum diem coram dño rege vbicunque &c. ostens. si quid pro se habeat vel dicere sciat quare dñs rex custodiam earundem terrarum & teñtorum habere non debeat, iuxta formam euidentiarum seu memorandorũ pro ipso rege compertorum. Et si venerit, & pro se ostendat quare eadem custodia ad dominum regem non pertineat, aut pertinere non debeat, immo quod remanere sibi debeat, recedat quietus, & custodiam suam retineat. Si autem premonitus non venerit, vel venerit, et nihill sciat dicere, quare rex custodiam illam habere non debeat, statim reseisientur terræ & tenementa illa in manum domini regis nomine custodiæ, tenend' vsque ad legittimam ætatem heredum eorundem, sicut superius dictum est. Et si compertum fuerit per inquisitiones per eschaetores suos factas & returnatas, quod custodia eorũdem terrarum & teñ in inquisitionibus contentorum, & in manum dñi seisitorum domino regi remanere non debeat, quod statim mandetur eschaetoribus quod manus suas amoueant, & exitus integré reddant &c. Eodem modo si postea compertum fuerit per euidentias & memoranda in Cancellaria aut scaccario, vel alibi, vt predictum est, quod dominus rex custodiã eorum habere debet, respondeatur ipsi domino regi de exitibus integré per manus illorum qui terras aut tenementa illa tenuerint a toto tempore, postquam terræ & tenementa illa primo in manum ipsius domini regis per eschaetores suos capta fuerint per breuia supradicta, & iste modus de cætero obseruetur in cãcellaria, non obstante quadã ordinatione nuper per dominum regem facta de terris & teñ in manũ suã per ministros suos captis & non liberandis, nisi per ipsum dominum regem, & prout cõtinetur in quadã diuidenda per ipsum regẽ & cãcellarium facta, Cuius vna pars penes cancellarium remanet. Statutũ de eschaetoribus editũ. 29. E. 2.

Also a yeare before the making of this statute, was there an other statut made, entituled, *Articuli super chartas*, **which in the 19. chap. therof saith in this wise:** *De reschein la ou les-*

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thetour, ou le vicount seisount en le maine le roy terres la ouit nad reason de seiser, & puis quaunt troue est la non reason, les issues de mesne temps ount estre ceo en arrere retenus, & nad rendus quant le roy ad le maine ouste, voet le roy que desormes la ou terres sount issint seisies, & puis le maine ouste, pur ceo que il ny ad reason de seiser ne tener, soient les issues pleinment rendus a celuy a qui la terre demurt, & auoit le dam resceu.

By this statut it plainely appeareth, how that before the making thereof there was noe *Ouster le maine* graunted *vna cum exitibus*, although it might neuer soe plainely appeare the kinge had no cause to seise. Howbeit that mischiefe is now remedied by both these statuts. Also by the one of these statutes it appereth, that the *Ouster le maine* in such case might not bee graunted without suing to the kinge him selfe, which is also remedied by this statute *De escaetoribus*, which statut although it make no mention of liueries, but onely of *Ouster le maine*, yet liueries are taken to bee within the compasse and prouision of the same. And where the letter goeth onely to the cases where the king seiseth before office, and afterwarde the office that is foũd, doth geeue his highnesse no title, that there the party may haue his *Ouster le maine* making no mencion of an *Ouster le maine* to bee graunted vppon any petition, trauerse, or *Monstraunce de droit*, as in deede a trauerse was not in vze at that time, yet mẽ by an equity extend this statut *De escaetoribus* both to ẏ one & to the other, because the statut is beneficial, as appeareth Ỿ. 9. E. 4. 51. & in diuers other bookes. And *Yelwerton* there saith, ẏ if after liuerie, or *Ouster le maine* an office bee found, which entitleth the king of a title growen vnto him since the liuerie, or *Ouster le maine* graunted, that in that case this statut notwithstanding, the king may reseise without a *Scire fac.* for the woords are onely where a record or an office is found that mainteineth the title where by the king first seised. Howbeit many hold opinion against hym, and say that it was in the selfe same mischiefe the sta-

tut was made for, *tamen quære*, for this ſtatute *De eſcaetoribꝰ* ſhould ſeeme to bee meant onely to remedy that that was a miſchiefe at comõ lawe before the making of the ſaid ſtatut, as where there was no record found at ẏ time of ẏ liuery or *Ouſter le maine* ſued to lette or hinder the party from ſuing of their ſaid liuery or *Ouſter le maine*, but afterwards was there found ſuch a record, now this notwithſtanding would the kynge reſciſe & put the party from his poſſeſſiõ wout aunſwere to any proces ſued againſt him, whereupon he might aunſwere & ſo driue him to ſue by petition, & make him render al the meane profits, which was a great miſchiefe & hinderãce to ẏ party, for remedy wherof this ſtatut was made, but the like miſchiefe or hinderaunce is not where the kyng is entitled by a title growẽ ſince ẏ liuery or *Ouſter le maine*, for here the party ſhall not anſwcare the profites but from ẏ time of this title growen. And alſo the kinge doth him no wrõg, for it ſtãds with & affirmes ẏ liuery or *Ouſter le maine*, & the king thereby makes not the party an intruder as hee doth in the other caſe, & if the ſaid *yelverions* opinion ſhould not be lawe, they would make ẏ the king could not ſeiſe vpon an alienation wout licence made & found by office ſince the liuery or *Ouſter le maine* ſued, which were no reaſõ, & therfore I think the ſaid *yelverions* opiniõ ſhould preuaile in this caſe. And to ẏ ſãe intẽt & effect be thoſe books ẏ I cã find, for I cã find no *ſcire fac.* ſued but in caſes of a title growẽ before ẏ liueries or *Ouſter le maine*, & therefore in a *Scire fac.* ſued vpon thys ſtatut againſt ẏ party that had liuery or *Ouſter le main* being tenaunt of the land at the time of *ſcire fac.* ſued, hee was vewed in the ſelfe ſame plight & courſe againſt the king as he was at the time of the ſuinge of his liuery or *Ouſter le maine*, for where he had made a feffement by licence, & taken an eſtate againe iointly to him and other, yet this *ſcire fac.* did lie againſt him ſoly, & did not abate for the ioynteaunctie. So was it aiudged in a *Scire fac.* ſued vpon this ſtatut ẏ the party muſt mainteine the title wherby he hath liuery or

Ouster le maine, and must maintaine it so that it is and was a good title & sufficient to haue liuery vpō, notwithstanding any record that is now found: as take the case to be this, one hath liuery as sole daughter & heire, and after by office it ys found that shee hath a sister, which ought to haue had liuery with her, whereupon a *scire fac.* is sued against the party that had liuery, to come & shewe why the land should not be reseised, if she come and wil say that they be daughters by seuerall venters, & that this land was geuen to her father & mother in speciall taile, & so ought shee to haue the liuere, as she had, ỳ is to say, soly, this ple wil not serue her, because it doth not maintaine the liuery: for how could she haue had liuery soly, vnlesse this matter had ben so found by office, For if this second office had appeared before the liuery, shee could not haue trauersed it, vnlesse shee had made title, and then title can shee neuer make against the kinge, as heire, vnlesse the said title bee first found by office. Wherefore no more then she might trauerse the said office it had ben found before liuery, no more may shee trauerse it nowe in this *scire fac.* after liuery, as it appeareth 30.li. all.28. & so note ỳ the record cannot be trauersed in this *scire fac.* in no case, vnles it were trauersable before liuery or *Ouster le maine*. Also in the newe *Natura breuium*. fo.260.& in H.5.H.5.2. I find a *scire fac.* sued vpon this statut against him that had liuery, because an office hath found an other to bee nerer heire to the auncestour that died then was he ỳ sued liuery. So alwaies as farre as I can find, it is sued vpō a record that disproues ỳ liuery or *Ouster le maine*, and not vpon any ỳ affirmes it, whereby I suppose ỳ *Yelwertons* opinion is lawe, as is before declared. And it seemes that by this statut ỳ king must sue a *scire fac.* although ỳ record or title ỳ is found for him be fond within a yere after liuery or *Ouster le maine* sued. And learne whether Assise lieth against the escheto^r that seiseth without a *scire facias*, in cases where a *scire facias* should bee sued: for by ỳ sta. of W.1.ca.24. assise lieth against him in cases where

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he seiseth any landes by colour of his office without special warrant, or commaundement, or certaine auctho*ri*tie that belongeth to his office so to do. And learne whether the king by that seisure hath any possession, for if the king seise without a *scire facias*, wher he ought to sue a *scire facias*, the party hath no remedy but to sue vnto him by peticion, euen as hee should doe if his highnes had seised any other lands of his wt̄out cause. Notwithstanding the kinge by such a reseiser vndoeth not ẏ parties possession, so ẏ he shal be said an intruder from the time of liuery or *Ouster le maine* sued, as it doth in the case reseiser had bene vpon a *Scire facias*, wherefore in such case although the party cannot be suffered to recouer his possessiō againe by entry vpon the king, yet when the king graunts it ouer, he may now enter or haue assise, as appeareth 24. E.3. fo. 64. & 43. li. ass. 29. Also note ẏ this statut that geues the *Scire facias* extendes but vnto hym or thē ẏ haue liuery or *Ouster le maine*, or any other claiming by thē. For if after liuery or *Ouster le maine* sued, a straunger by an *eigne title* in disaffirming the tenāts interest enter as heire vpon him, or recouer by assise of Mordauncester, or any other acteon aū restrell against him, & is entred into the land as heire, now because the lands are holden of the king in chiefe, his highnes may seise the said land for primer seisin or title of wardship, as the case doth require, wout any *Scire fac.* as appereth in H. 21, E. 3. f. 1. For it is not to be said now a reseiser, because against hym there was no seiser made of ẏ said lands before. And learne & enquier if he that millueth the liuery be wīn age, whether the king shall reseise in that case, as he shal doe if it were millued by one of ful age, as take ẏ case to be, lands are holdē of the king in Socage in Capite, now the liuery is sued within age that is to say, at ẏ age of 14. yeres, whether in this case ẏ millsuing of ẏ same shall be a cause of reseisure or not, see ẏ booke thereof *Liuery* 28. M. 12. H. 2. The wordes of the statut be further, that if any record be found in the treasory, or els where, that vpon this record a *Scire facias*

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ſhalbe awarded. But that is to bee vnderſtand in this maner, that firſt the tranſcript of the ſaid recoꝛd ſhalbe by wꝛit remoued into the Chauncery, and then out of the Chauncerie ſhal there bee a *Scire fac.* awarded, and not out of the Treaſoꝛie, as it appeareth 21. li. Aſſ. 15.

Issues meſne. Cap. xxvii.

NOte that if the king haue a title, right oꝛ intereſt to any lands oꝛ tenements, his highnes whē he ſeiſeth ſhalbe aunſwered of al the meſne iſſues and pꝛofits from the time of his ſaid title, right oꝛ intereſt gꝛowen, and whether it be a right of entrie, oꝛ title of entrie, it maketh no diuerſitie in the kings caſe, as foꝛ an example, the king entreth foꝛ a condition bꝛoken, his highnes ſhal bee aunſwered of al the iſſues & pꝛofits ſince the cōdition bꝛokē, & in that caſe a common perſon ſhall not haue the iſſues & pꝛofits but from the time of his entrie 18. *Aſſ.* 18. *Enter cong.* H. 19. E. 3. Like law is it, if the kinges tenant alien in Moꝛtmaine, & the king entreth, but otherwiſe it is, if he enter foꝛ moꝛtmaine in landes not holden of him vpon a title reuolued vnto his highnes in deſault of other lōꝛds. H. 41. E. 3. f. 31. The ſame law is it where his highnes is entitled to ſeiſe foꝛ that the lāds are of his foundation, and alienēd contrarie to the ſtatut of Weſt. 2. ca. 41. which geeues the wꝛit of *Contra formam collationis*, in this caſe caſe his highnes ſhalbe aunſwered of all the meſne iſſues gꝛowen from the time of the alienation, as appeareth in *Forfaiture* 18. H. 46. E. 3. And note alſo that if the king make any graūt which is not ſuffi cient in the law, oꝛ is deꝛeined in the making of the ſame, by reaſon it was made vpon a falſe ſuggeſtiō, in this caſe if his highnes doth reſeaue this grāt, & adnul it *iure regis*, as he may, he ſhal then be aunſwered of all the meſne iſſues & pꝛofits which were loſt by reaſon of the ſaid inſufficiēt grāt

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as appeareth 9.11. H.4.f.5. but if his highnes be entitled to any lands, *nomine districtionis*, there his highnesse shal not be answeared of the profites, but from the finding of the title, as in case where the kinges tenant in chiefe alieneth without licēce, & an office is thereof found, in this case his highnes shal not be answered of the profits from ỳ time of that alienation, but only from the time of the finding of ỳ office, or from the time of a *scire facias* returned, where the alienation is of record, & hereof see the booke P.8. E.4.f.4. Like law is it, where his highnes is to seise the lands of his wydow that hath maried her selfe wout his licence, 40.li.ass.36. And note that where ỳ king is to be answeared of ỳ mesne issues & profits perceiued & taken of any lands which haue come to sundry hands since the kings title first growen to the same, there euery one of thē ỳ haue sunderly perceiued & taken ỳ profits, shal answere for his owne time, & not one for al, as it appeareth in the booke of 46. before remembred. And note also ỳ by ỳ statut of W.2.ca.32. it is prouided ỳ if any spiritual man bring any real actiō & recouer, ỳ ỳ land recouered shal remaine in ỳ kings hands, vntil suche time as it be sued out of his hands by him ỳ recouered, or els by ỳ chiefe Lord, & in ỳ meane time ỳ sheriffe shal answeare the king in ỳ eschequer of ỳ profits, by which statut, whether ỳ collusiō be found, or not foūd, yet ỳ king shal haue ỳ meane issues, as it is thought. T.20. H.6.f.38. So is it in a writ iudicial of deceite brought against any, the king shal haue the issues growē frō the time of the first iugemēt, vntil iudgemēt be geuē in ỳ said writ of deceit, but hereof note this differēce, ỳ in a writt of deceit vpon a recouery in a *Precipe quod reddat* of lād where ỳ proces was a *graund cape*, if ỳ pleintife recouer, he shal recouer the lād & his damages, but not the issues of the lād since ỳ first iudgement, because ỳ king shal haue thē by the *graund cape*, & the sheriffe accomptable of thē *Quod vide titulo Disceit in Fitzh.33.& .46. P.12. R.2. P.2. E.3. H.8. E.3.f.7. et. T.50 E 3.f.18.* Cōtrary law is it if ther lie no *grād cape*

cape in the action, as if the recouery be in a *Scire facias*, as it appeareth Y.17.E.3.f.12. Y.41.E.3.f.2.a.43.E.3.f.32. & Y. 8.Y.6.f.5.

Sometime the king recouereth of the issue in the auowsõs of an estraungers title, as if the husbande being the kinges tenant vppon a false suggestion purchaseth licence to alien, and to make estate to him and to his wife, and so doth, and afterward dieth, the wife holdeth her in by title of Suruiuor, and occupieth, now vpon a *Scire fac.* against the wife, his highnesse shalbee aunswered of al the meane issues since her occupyinge of the two partes of the lande, and the thirde parte hee occupieth and alloweth for her dower. 40. lib. all. Y.36.

FINIS.

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